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A VINDICATION

OF

THE MEASURES OF THE PRESIDENT

AND

HIS COMMANDING GENERALS,

IN

THE COMMENCEMENT AND TERMINATION

OF THE

SEMINOLE WAR.

BY A CITIZEN OF THE STATE OF TENNESSEE.

John Overton

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IN SENATE OF THE UNITED STATES,

FEBRUARY 24, 1819.

Mr. LACOCK, from the committee appointed in pursuance of the resolution of the Senate, of the 18th December last, "That the Message of the President, and documents relative to the Seminole war, be referred to a select committee, who shall have authority, if necessary, to send for persons and papers: That said committee inquire relative to the advance of the United States' troops into West Florida; whether the officers in command at Pensacola and St. Marks were amenable to, and under the control of, Spain; and, particularly, what circumstances existed to authorise or justify the commanding general in taking possession of these posts," made a report, which, with the accompanying documents, consists of fifty pages.

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A VINDICATION, &c.

THE Seminole War is a question which has produced such universal agitation, and elicited so much debate, that it has become almost stale and uninteresting. It is quite familiar to every mind; and the great solicitude which it has excited is to be found more in the characters connected with the transaction, than in the magnitude of the principles it involves.

Under such circumstances, an enquiry into this subject would not have been obtruded upon the people at present, was not an ample apology presented in the Report of a majority of a committee of the Senate of the United States, which was published about the close of the last session of Congress. The late period at which that document made its appearance, precluded the friends of the Administration and its commanding Generals an opportunity of refuting the positions which it assumed as the basis of censure. Being now before the world, it may be properly considered as a subject of public investigation; and believing that the door is still open for reply, I have ventured to submit the following remarks for the candid perusal of the American people.

In common with the great body of the people of the United States, the author of these observations has felt an unusual interest in the causes, progress, and result of the Seminole war. His attention has been constantly directed to the subject, and to a careful examination of its origin and consequences. After the very able and learned discussion in the House of Representatives of the United States, during the last session of Congress, relative to the measures adopted by the President and his commanding generals, in the commencement and progress of that war, it was anticipated that the subject would have remained in peace forever. It was believed by every impartial and intelligent citizen, that it had been exhibited in every possible attitude by the friends, as well as the enemies of the Executive. Except from a few individuals, whose motives were peculiar to themselves, all opposition had ceased; and the people of the nation had become completely satisfied, that the justification of the whole transaction was founded in the immutable

principles of national law, and of fundamental, political, and municipal regulations.

It is certainly true, that the people of Tennessee, together with a very large majority of the nation, are sincerely attached to the administration of Mr. Monroe. They likewise feel a just and honorable pride in having reared, from the first dawn of manhood, a *Jackson*, whose virtues and talents, they believe, give particular distinction to their state, and fondly hope, add great additional lustre to the character of the American people.(*a*) With such views and feelings, it cannot be a matter of surprize that they should manifest uncommon anxiety on this subject, or that they should be astonished at the continuance of an opposition, after the lucid exhibition of facts, with the eloquent and conclusive reasoning upon them by Mr. Adams, the Secretary of State of the United States. They believed that his masterly letter to Mr. Erving,(*b*) together with the debates in Congress, should have put all controversy to rest; as they amply satisfied every dispassionate mind of the solidity of the ground which had been occupied by the Executive and his commanding generals.

Although the excitement which was created in the nation upon this subject, had been almost completely allayed by the learned and diffusive enquiry in the House of Representatives, the great inquest of the nation; yet it was not effected without some regret on the part of those who cherish a sacred regard for the principles of the constitution. Whilst they witnessed an effort to remedy what, at best, was but a doubtful evil, their fears were aroused lest principles were to be sacrificed which would be preserved inviolate by every freeman.

It is a principle, familiar with all sound jurists, that the three great departments of the government—the Legislative, Executive, and Judicial, should never be permitted, in their operations, to encroach on each other. This principle is an essential preservative of liberty. It constitutes the main pillar of the political fabric, and should be guarded with unceasing vigilance. Whenever it shall be abandoned or disregarded, collision, discord, and confusion, must ensue; and, finally, two of the departments must fall prostrate and lifeless under the weight of the third.

It is in conformity with this principle that the army, when raised, is placed, by the constitution, under the control of the President, who is considered the commander in chief, and is

(*a*) Letter from Secretary of War, 8th September, 1818. Mr. Lacock's Report, p. 23.

(*b*) Nov. 28th, 1818, Doc. President's Message, Dec. 28th, 1818, p. 11.

held responsible for the conduct of all his subordinate officers, whilst acting under his orders. The officers in command during the Seminole war were General Gaines in the first instance, and afterwards General Jackson. Both are understood to have acted under the immediate authority of the Executive of the United States.

The Seminole Indians resided within the territory of a neighboring and friendly power; and with them were associated in acts of hostility against the United States, a banditti, consisting of pirates, traitors, English emissaries, negroes, and outlawed Red Stick Indians. The government of Spain, within whose territorial limits they found an asylum, either from inability or indisposition, permitted them to continue their ravages and murders with perfect security. Indeed, her officers gave encouragement to this murderous, incendiary, and predatory horde, and protected them against the just vengeance of the United States, whose citizens they had not only butchered, but whose warfare was marked by the cruel and indiscriminate slaughter of unoffending women and innocent children!

In the spring of 1818, Congress made provision for prosecuting the war against this renegado and motley crew of black, red, and white combatants, in consequence of the President's message to that body, in the month of March.(*c*) That communication made known to Congress, that, in carrying on hostilities, which, on our part, were entirely of a *defensive* character, the President had ordered his army to enter the Spanish territories; to respect the authorities of that nation where they were maintained, and to put a speedy and successful termination to the contest. With this information before them, as well as a full knowledge of all the causes which produced the war, the national legislature authorised the calling out of an additional brigade of militia, and actually made appropriations for the payment of the troops already in service.(*d*)

Independent of the sanction thus given to the measures of the President, he was authorised by the indisputable laws and usages of nations, as well as by virtue of the power vested in him by our constitution and laws, to give orders to his generals to enter the territory of Florida, and to carry on the *defensive* and unprovoked war in which we were engaged, without waiting for the assent and authority of Congress. Being entrusted with the defence and protection of the nation, it became his ab-

(*c*) See Mr. Cobb's resolution, H. R. U. S. 3d April, 1818, Journal.
(*d*) Acts first session 15th Congress, p. 94.

solute duty to repel invasion, and even to pursue the enemy into a neutral territory, should it be found necessary for the accomplishment of those purposes for which the war had been commenced.

With this view of the case, the President issued his orders(*e*) accordingly, to his commanding general. No rational doubt can be entertained as to the import and latitude of these orders; and that the officer to whom they were directed, acted in conformity with their spirit and intention, when he entered the territory of Florida, and took possession of the Spanish fortresses. Upon this subject, every candid mind must be completely satisfied, after an examination of those orders, as well as the debate in the House of Representatives; and more particularly the eloquent speeches of Messrs. Smyth, Tallmadge, Baldwin, and Poindexter.(*f*)

In relation to the manner in which the war was conducted, it is not consistent with the public interest, and a delicate regard for the high standing, reputation, and eminent services of the Executive and his commanding generals, that the subject should assume the attitude in which we find it presented to the American people, by the Report of a majority of the committee of the Senate of the United States.(*g*)

The minds of a large majority of the nation had become completely satisfied with the justice, legality, and wisdom of the course which had been pursued by the Executive; nor did the most ignorant and inattentive observer consider it as a question between the people of the United States and general Jackson. No. Every one, of ordinary penetration, saw, with a single glance, an effort, in preparatory steps, to the impeachment of the President.

The orders under which the commanding general acted were spread before the nation. He was commanded to chastise the enemy with *exemplary punishment;* to enter the territory of Florida in the prosecution of the war, and was fully authorised to adopt such measures as he might deem necessary for the establishment of a permanent peace.(*h*) Thus was the commanding general vested with as ample powers as the President him-

(*e*) Letters of Secretary of War, Appendix, No. 1, 2, 3.

(*f*) Published in the National Intelligencer under dates of 9th February, 25th February, 28th April, 29th March, and 2d April, 1819.

(*g*) This committee, when first appointed, consisted of Messrs. Lacock, the chairman, King, Forsyth, Burrill, and Eaton. Before the report was made, Mr. Forsyth was appointed Minister to Spain, upon which he resigned his seat in the Senate. His place was supplied by the appointment of Mr. Eppes. It is but justice to remark, that Messrs. King and Eaton were decidedly opposed to the report.

(*h*) Appendix No. 1, 2, 3.

self, had he commanded in person. He exercised the discretion with which he was entrusted, as developed and presented to the nation in the documents heretofore published, and ably commented on by the popular branch of the government. In addition to this, the President approved of the measures of the officer to whom these orders were directed, and consequently made them his own; thereby removing every doubt which could possibly have existed, in relation to the plenitude of his powers.

If an inferior is authorised to do an act in pursuance of his superior's orders, it certainly becomes the act of the superior, who is responsible for all the consequences; particularly, when he approves of the act after it is performed. No individual in the community is so ignorant as not to perceive the soundness of this position; and there were scarcely any who did not see, with equal clearness, all the features of an organized opposition to the Executive, in the resolutions of the House of Representatives disapproving of the execution of Arbuthnot, Ambrister, &c. It was also as easily to be discovered, that, if the opposition had succeeded on that occasion, they would have stood pledged to the nation to originate articles of impeachment against the President before the Senate of the United States!

The nature and character of the opposition were satisfactorily developed by circumstances which had already transpired. During the session preceding the last, the course adopted by the Executive was distinctly defined and presented to Congress, who approved of the same, and provided men and money for the purpose of prosecuting the war with vigor and effect—and this, too, after an eloquent appeal had been made to the justice and patriotism of the national legislature to protect the frontiers from rapine and murder. Furthermore, the conduct of the Spanish authorities in affording aid and comfort to the British and Indians, during our late struggle with England, was well known to Congress. They had also unquestionable proof in abundance that those authorities had pursued the same hostile course towards the citizens of the United States, from the conclusion of that war, down to the period at which they were suppressed, in self defence, by the President and his commanding generals, in the war with the Seminoles.

All this evidence was in the possession of the House of Representatives, and of the people of this nation; as well as a methodical and lucid arrangement of facts, with conclusive infer-

ences arising from the laws of nature and nations, by the Secretary of State. Amongst the people, this developement was entirely satisfactory to all; yet, in the popular branch of the national legislature, the focus of information, the same degree of satisfaction did not prevail. The great body of the people were unable to account for this circumstance upon any other principle, than that there might possibly have been some misconduct in the commanding generals, unknown to the Executive, and which they, as the grand inquest of the nation, were bound, in honest regard to the welfare of the country, impartially to disclose. This belief soon vanished, as the illusion of a dream, upon the production of the resolutions of the military committee, disapproving of the execution of Arbuthnot, Ambrister, &c. The second and third resolutions of Mr. Cobb dissipated all doubt, and convinced every one, of the least reflection, that the *President, with the Secretaries of State, and of War*, who had published to the world their unqualified approbation of the entry made into Florida—of the occupation of the Spanish posts, as well as the execution of the Indian chiefs and British outlaws, were intended to be embraced in the contemplated censure. The flimsy distinction attempted to be made by some of the members, between a *disapproval* and *censure*, was not felt or understood by the nation. This veil was too thin to cover the ulterior views of the opposition. Their propositions were considered as necessarily fraught with the severest censure; and rendered the proceeding, as it incidentally related to the commanding general, as unprecedented as it was unconstitutional. Such a measure could only have been justifiable on the ground that it was preparatory to, and intended as the basis of, an impeachment of the President, who had made all the acts of his officers his own, as well by express authority conferred, as by subsequent adoption.

It would certainly have been a much more manly, dignified, and correct course, to have preferred articles of impeachment against the President at once, than for the representatives of a great nation, to have thus expended their time and the people's money in bandying the reputation of the generals, colonels, and captains of our army, and by these means feeling the public pulse, and endeavoring to trick the people of the Union into a disapprobation of his measures.

Although the President had not, in so many words, expressly directed his commanding General to execute the two Indian Chiefs and their infamous associates, Arbuthnot and Ambrister, nor to take possession of the Spanish fortresses; yet he

delegated to him a general authority to inflict *exemplary punishment*, and to employ all such measures as he might deem *necessary*, agreeably to law, to put a speedy and effectual termination to a cruel, predatory, and murderous war of negroes and savages; and to secure an honorable and permanent peace to the country. The acts imputed to the commanding General were performed in conformity with the powers conferred on him, and in perfect accordance with the clear and undeniable principles of national law, in relation to the rights of self-preservation. These measures of the Executive gave entire satisfaction to the people of the United States, inasmuch as it was distinctly perceived that no other course could have been adopted which would have secured so desirable an end.

The duty of the House of Representatives to take cognizance of all abuses of authority, by any officer of the Government, from the President down to his respective subalterns, is well understood by every intelligent individual in the community. They are authorized to enquire of *facts*, if they relate to the duties of the subordinate offices of the Executive Department, and to offer those facts to the consideration of the President, who is the constitutional organ of correction. (*i*) But the same course cannot be pursued in relation to acts which have been already acknowledged by the Executive branch of the government to be his own. After being ascertained, avowed, and published to the world as the acts of the Executive, all enquiry as to fact is superseded, as the subject is then a matter of record, in the archives of the nation, and nothing remains to be done but either to impeach or approve.

With respect to *censure*, all writers on military law concur in the opinion, that it is a *punishment very little inferior to cashiering or suspension; it has always been inflicted by a court martial, and its severity* depends, in some degree, on the rank of the offender, as well as the nature of the offence committed. What higher offence, let me ask, can an officer perpetrate, than causelessly to authorize and approve the seizure of the fortified places of a neighboring friendly power, contrary to the provisions of municipal and international law, and in violation of our own constitution? There is certainly none; and if such an outrage is not already punished with death, the law should provide to inflict upon it that dreadful penalty. Such, however, is one of the allegations which has been preferred by the House of Representatives of the United States against the Executive and his commanding General, under the guise of a disapproval!

(*i*) 4 Inst. 11, 24. See also Com. Dig. tit. Parliament.

In vain would the people of the United States boast of the freedom of their political institutions, if a charge against one of its citizens can be investigated in the most important branch of the national government, and a verdict of guilty awarded, without affording the accused an opportunity of being heard in his defence! It would be a violation of all justice and principle, in consequence of the examination being illegal, and the accusers and triers united in the same body of individuals.(*k*)

In regard to transactions not previously authorized by the Executive, an enquiry into *facts*, with a report of them to that department of the government for its information, (as in the report on the case of General Wilkinson,) would, on many occasions, be highly proper; but, in cases where the President has acted derogatory to the high trust reposed in him, and in violation of the constitution—or, where his subordinate officers have thus offended without his authority, and he refuses or neglects to arrest and punish them, after ample information from the House of Representatives—no other constitutional remedy is afforded, but to exhibit articles of impeachment against him. The political relationship which exists between the people or their immediate representatives and the Executive branch of the government, renders the President alone accountable to the House of Representatives, and not his subaltern officers, from a Major General down to a Captain or Corporal of our army. Were the rule otherwise, an endless waste of time and treasure would be the inevitable consequence, besides the entire incompetency of such a tribunal to the rightful ascertainment of even facts, in a multiplicity of such trivial cases. It is only where the subject is momentous, or the rank of the offender is of deep concern to the national interest, that the Constitution requires the interposition of the House of Representatives. In these cases, it is essentially necessary that their powers should be exercised in a manner consistent with the rights and privileges of the citizen, in a Republic or free government, and not in passing a vote of censure, which is equivalent to a verdict of guilty, and inflicts the heaviest punishment, without giving the party an opportunity of being heard in his defence!

It is one of the fundamental principles of law, religion, and justice, that no one shall be condemned before he is heard, either by himself or counsel. Neither the House of Representatives, nor any other tribunal in a free country, is exempt from the observance of this rule. Its dictates are imperative,

(*k*) 5 Com. Dig. tit. Parliament 48.

as they are established upon the immutable principles of the laws of nature and of nature's God. Wherever the rights of the citizen are respected, this sacred principle is maintained, at the risk of life itself, by every honest and independent individual in the universe. So inviolable is its nature, that tribunals are erected for its protection, even in governments of the most absolute despotism. Its form was never dispensed with, except on a few occasions, during the most oppressive and gloomy periods of the English government; and not even then, without being strongly marked with the indignation of the people, as well as the execration of both the historian and posterity.

As in all legislative enquiries into the conduct of *civil* officers, the allegations are determined before the Senate; so, in those of a *military* character, the charges are preferred before a court martial, and submitted to their exclusive and final decision. When the House of Representatives undertake to pass a vote of *censure* on a military officer, they desert *legislation* and assume *judicial* powers. They exercise a privilege which is not, in the least, connected with the *enactment* of laws, but is inseparable from their *administration*. Besides, the most galling punishment is inflicted which can wound the bosom of a soldier, by passing upon him a sentence of infamy, from which there is no appeal, save to his God and his own conscience.

The resolutions of the House of Representatives proposed, in effect, the passage of something resembling an *ex post facto* law, or bill of attainder. Such a course must vitally interfere with the constitutional prerogative of the President to select his own officers; to retain in service those with whom he may be satisfied, and dismiss such as may merit his displeasure. It may be also considered as a dangerous attempt to transfer the responsibility of the military from the Executive to the Legislative Department of the government. The consequence would be, that the energy and usefulness of the Executive becomes destroyed; the resources of the government paralized; every thing like a system of checks and balances disregarded, which is first succeeded by anarchy, and, in the end, by the most hideous and loathsome despotism. The President is stript of his authority, and court martials are rendered altogether useless in their operations.

By the Constitution, the President is made the commander in chief of the army and navy of the United States, as well as the militia, when called into actual service. Being placed at the head of the physical force of the nation, he constitutes the

ultimate tribunal to decide all questions touching the operations of the army, and the conduct of the officers under his command. Congress is required to make *rules* for the *government* of the land and naval forces; but it is evident that the President must be entrusted with their application and execution.

No political proposition can be more demonstrable than that this is not a *legislative* power. Indeed, our laws recognize this idea throughout all their provisions; and it is believed to be the first instance on record, either in this country or in England, in which the Executive has been interrupted in the exercise of his legitimate authority over the military officers under his command. As he is responsible to Congress for the acts of his subalterns, they should certainly be subjected to his control and direction; as it is a sound principle, in all free governments at least, that *power* and *responsibility* ought never to be separated. Besides, it is unjust to expose the subordinate officers of the army to the *censure* of Congress, as they do not receive their orders from that branch of the government, and as they would be tried twice for the same offence, if afterwards made amenable to the jurisdiction of a court martial. An additional argument in favor of the view which I have taken of this subject, is, that when the power to impeach and try *civil* officers was conferred on Congress, that in relation to the *military* department was entirely omitted.

This part of the subject, however, presents itself in a still more alarming point of view, upon a more particular examination. Had the House of Representatives adopted the resolutions of *censure*, and a court martial been ordered for the trial of the commanding General, what are the circumstances under which he would be compelled to appear before such a tribunal? They must necessarily have been inauspicious and appalling in the extreme. When put upon his trial, he is informed at the threshhold that he had already been found guilty by the most responsible and enlightened body in the nation. His criminality is presumed, and his conviction anticipated. If he is condemned, it is attributed to the circumstance of the House of Representatives having prejudged the case; and if acquitted, the decisions of the civil and military authorities are arrayed in opposition to each other. This is a state of things which is greatly to be deprecated, and should be assiduously avoided by every friend to good order and regular government. Furthermore, the individual accused is often deprived of the property he holds in an unsullied reputation, which constitutes the richest inheritance from his ancestors, as well as the most precious patrimony of his descendants.

These are some of the ideas which have presented themselves to the understanding of the writer, relative to the legislative proceedings against the Executive and his commanding officers, whose acts are particularly referred to in the resolutions of the House of Representatives. With respect to the President, it is here necessary to be remarked, that the facts embraced in the first and third resolutions, in relation to the execution of Arbuthnot and Ambrister, as also the taking possession of the Spanish posts, were executive acts—they were of record, and did not require an enquiry to be instituted upon the subject. Being already ascertained and laid before the House of Representatives, no other legal course was presented, save that of impeachment. The second and fourth resolutions recommended the enactment of laws to prevent our commanding generals from putting to death any captive, in future, without the approbation of the President; and to prohibit our armies from marching into foreign territories without the authority of Congress, unless in the fresh pursuit of a defeated and flying enemy. The time employed in the discussion of the first and third resolutions was altogether useless, as well as a profuse waste of the public treasure; because it would have been necessary to travel over the whole ground again, upon the impeachment of the President, had the proposed resolutions been finally adopted.

Thus it appears that two classes of resolutions, quite foreign and distinct in their character, were introduced for consideration; one for the infliction of punishment; the other as the basis of legislation; and both to be discussed at the same time, which was certainly a mode of procedure very novel and unprecedented in so dignified and enlightened a body. Having been coupled together, nothing more nor less can be presumed, than that one was intended to be subservient to the other. If *legislation* were the object, or had it been necessary, it could have been effected in the ordinary mode, agreeably to the import of the second and fourth resolutions; but if *censure* were the purpose of pursuit, it must have been anticipated by its friends, that the first and third resolutions could not stand alone a moment, in consequence of their being opposed by former precedent, as well as a common sense of justice inherent in our nature, which disapproves of the condemnation or punishment of an individual without being heard in his defence. It is therefore conceived, that the two resolutions intended as the basis of legislation, were altogether secondary and subservient, and were designed only to give currency to the resolutions of censure, which was no doubt the primary object of the op-

position. The proffered censure, as well as legislation, was, however, rejected, by an overwhelming majority of the House of Representatives, and their decision was accompanied by the almost universal approbation of the American people.

A portion of the same spirit of opposition to the Executive branch of the government, which was displayed in the House of Representatives, seems to have infused its leaven into the bosoms of some of the members of the Senate of the United States. By a majority of a committee of *five* members of that highly responsible and august body, has a report upon the subject of the Seminole war been published to the nation. The appearance of this document produced a wish that some individual in the community would examine the facts and inferences which it contained, with a becoming degree of candor and impartiality. New grounds of accusation were exhibited, which had never passed through the ordeal of solemn discussion, as had been the case with those which were presented in the resolutions of the House of Representatives.

The author of this address has been, for many years, a resident of the state of Tennessee, and personally acquainted with General Jackson. As a military officer, he has recognized him as inferior to none; and entertained a high respect for his character as an honest and honorable patriot, whose long course of faithful services has placed him in the first rank of public benefactors. To the writer, Mr. Monroe is entirely unknown, except from character and the acts of his administration, the last of which are almost universally approved, in consequence of the national and patriotic features by which they are distinguished.

Under such circumstances, having learned that General Jackson's health was much impaired, and that no one of his numerous friends had attempted a vindication of the conduct of the Executive, in which his own was involved, I determined to offer to the American people such reflections as had presented themselves to my own mind, upon reading the report of a majority of the committee of the Senate. Some information was already in the possession of the author in relation to the mode of raising volunteers; but it seemed very probable that there was yet a considerable portion which had not hitherto found its way into the public prints. This idea was suggested by the time and manner in which the report was made, scarcely admitting of a full disclosure of all the evidence of which the subject was susceptible. Though sensible that much more able pens could be employed in vindicating the measures of the Executive and his commanding Generals from the errors and

misrepresentations contained in the report; yet the liberty was taken to address a note to General Jackson, through the Editors of the Nashville Whig, under the assumed signature of the writer. An answer was received, containing information in some respects not derivable from the documents hitherto published, and accompanied by copies of sundry papers of a similar character, which, with others, have been thrown into the usual form of an appendix.

In the consideration of this subject, it must present itself to the mind of every reader, that the President and General Jackson are personages distinguished by stations of a high and responsible character. In common with others, they are citizens of this great republic, and are entitled to the enjoyment of those rights and privileges which belong to freemen. They are guarantied to them by the laws and constitution of their country, for a violation of which they now stand accused by this report before the august tribunal of the American people.

As one of the people, and not as the humble admirer or sycophant of any man or set of men, nor as implicitly attached to any party in the nation, has the author of these observations consented to go into an investigation of this subject before the public. He undertakes the task with due deference, and solicits of the people a portion of their candor, indulgence, and attention. He entertains the opinion that his fellow citizens are as deeply interested in the purity and correctness of the Executive branch of the government, as in the management of either of the other two departments: Indeed, the reputation of the Executive and his official agents is to be estimated as the property of the nation. When their measures are not only justifiable, but also of a great political advantage to the country, it is incumbent upon every member of the community to repel detraction from whatever quarter it may proceed, whether it assumes the shape of insidious rumor, or lurks under the specious guise of official privilege.

Believing the imputations contained in this report to be unjust, and as unfounded in fact as in law, I shall, under the influence of these impressions, proceed in the investigation of this subject, with a sacred regard to truth wherever it may be discovered. I shall endeavor to form a logical judgment of the facts presented, draw legitimate conclusions from the premises assumed, and not wander from the question of merit or demerit, in search of impertinent allusions or invidious suspicions. From such an examination, the world will be enabled to decide whether a majority of the committee have '*maturely*' and '*dispassionately*' exhibited the facts, and the '*deductions*

clearly arising out of the facts,' as stated by themselves; (which is certainly incorrect in numerous instances,) or whether they can be considered as *sanctæ personæ*, and their proceedings to resemble those of judges on the bench, in being as nearly perfect as human frailty will admit.

The first consideration which presents itself in the progress of this enquiry, is the nature and extent of the authority under which the committee acted.

Only three propositions are contained in the resolution of the Senate by which this committee was appointed; and so far as a majority of them have transcended its limits, either in a statement of facts, or inferences drawn from them, their acts must be viewed as extrajudicial, and as entirely without the scope of their authority.

The first proposition authorizes them to inquire relative to the advance of the United States troops into West Florida.

Second proposition. To enquire whether the Spanish officers in command at St. Marks and Pensacola were amenable to and under the control of Spain.

Third proposition. To enquire what circumstances existed to authorise or justify the commanding general in taking possession of the Spanish posts.

In these three propositions are contained all the authority under which a majority of the committee were deputed to act upon the subjects of enquiry. Let any dispassionate individual now compare the report made under this authority, with the authority itself, and it will be very readily perceived, how little of the criminating matter to be found in that instrument falls within the compass of the powers conferred by the resolution of the Senate. All enquiry and commentary without the pale of that resolution was a departure from sound practice, and an abuse of the trust reposed in a majority of the committee by the Senate, of which they were members.

The report expressly recognizes the facts, that a war had existed between the United States and the Seminole Indians, and that it was sanctioned by the acts of Congress, in providing men and money for its prosecution in the spring of 1818. Hence, the following grounds for a vote of censure on the proceedings of the President and his officers, by a majority of the committee, were entirely without the boundaries, and foreign to the aim of the resolution authorizing them to engage in the enquiry.

First.—The enquiry into the original causes of the war.

Second.—The withdrawal of the regular troops from the frontier of Georgia.

Third.—The employment of Volunteers and friendly Indians, to fight our battles with the Seminoles, instead of drafted militia.

Fourth.—The execution of Arbuthnot and Ambrister.

Fifth.—The order to General Gaines to take possession of St. Augustine.—and

Sixth.—The reasons and motives of the commanding General in the conduct and management of the war.

As a further elucidation of this subject, I shall, in this place, undertake to enquire into the jurisdiction of the Senate, for the purpose of ascertaining whether that body is competent to the adoption of the Report as it has been presented to the nation.

It here deserves to be remarked, that, although there is no formal resolution of censure subjoined to the report, under the insidious guise of *disapproval*, as in the Report of the House of Representatives; yet, a majority of the committee arrive as completely at the same result, by repeated insinuations of malconduct, as well as covert avowals of criminality in the Executive and his official agents. No remedial act, however, is proposed to be done, nor any measure of justice or policy recommended; and it must be self-evident, to every understanding capable of the least reflection, that the barren legislation which evaporates in empty censure is worse than useless, and is a wanton waste of time and treasure.

In this shape the Report is presented to the Senate for their adoption or rejection. Should it be adopted, the unavoidable consequence will be, that the President and his commanding Generals are virtually pronounced to be guilty of the highest crimes and misdemeanors. Then, it may be said, with truth, that the most exalted tribunal in the nation determined, after *mature deliberation*, that the President had expressly authorized, and, with the Secretaries of State and War, afterwards decidedly approved of the identical acts which are represented by this report to have been committed by Generals Gaines and Jackson.—And this, too, entirely upon an *ex parte* examination, and without permitting the accused to be heard, either by themselves or counsel. In addition to this, the Executive is, in substance, stated to have done so, with a total disregard of his high and responsible duties, as the Chief Magistrate of the nation, and in violation of its constitution and laws. These acts are not *avowedly* alleged against those distinguished personages as *crimes*. No, reader. The language and spirit of the report are too soft, gentle, and full of regret, for such an *open* method of accusation; although every one must be per-

fectly sensible that the imputations which it contains involve criminality of the deepest dye!

The observations which have already been advanced upon the subject of jurisdiction in the House of Representatives, are in many respects equally applicable to the report of a majority of the committee of the Senate. They demonstrate, in the most conclusive manner, that neither branch of the Legislature of the Union can interfere in the trial and condemnation of a subordinate officer of the army,—that such a measure is the parent of consolidation, which is admitted by all political writers to constitute the essence of despotism.

As it respects the commanding Generals, there are the same objections to a legislative interference in one House as in the other; but, so far as the President is involved, the report of a majority of the committee is still more dangerous and alarming. When the question is presented in this attitude, it must be considered as one of the most gigantic strides of power which has ever distinguished the proceedings of a legislative body. After the subject had been disposed of, and supposed to be finally settled in the House of Representatives, a committee of the Senate took it up for consideration; prosecuted it with an industry that was unexampled, and animadverted upon it with a severity, which was not altogether compatible with the dignity of the Senate, of which they were members.

As all the *civil* officers of the American government are subject to the impeachment of the House of Representatives, it was certainly their duty to enquire how the Seminole war had been conducted; but it was a subject with which the Senate could not constitutionally interfere, until it came before them in the shape of an impeachment.(*l*) In such cases, the House of Representatives *originate* accusations, and the Senate *try* them. In consequence of the last body being removed at a great distance from the people, they are not permitted to institute any enquiry of an *accusative* character, (except for breach of privilege,) or which will operate as the *basis* of an impeachment. This is most assuredly a sound regulation, for the additional and conclusive reason, that the Senate is the tribunal before which all the allegations are to be exhibited and determined. Was the contrary the fact, the *accusers* and *triers*, as I have before remarked, would be united in the same body, and all the valuable purposes of justice would be entirely defeated.

(*l*) 5 Com. Dig. tit. Parliament, 48.

The great difficulty in relation to the report of a majority of the committee of the Senate is, that the President alone is responsible for all the measures adopted during the Seminole war; having first authorised them, and afterwards expressed his unqualified approval. Under these circumstances, I will suppose, for the sake of argument, that the House of Representatives should prefer articles of impeachment against the Executive at their ensuing session, is any individual prepared to say, that a majority of the committee could sit and pass judgment upon them? I think no one will be disposed to answer in the affirmative, with any color of justice and consistency. On such occasions, the Senate are the judges, and exercise, in some measure, the powers of courts, agreeably to the practice in equity cases. They try, judge, and pass sentence, after fully having heard the parties face to face, with all the evidence on both sides of the question.

It must be self-evident to every reflecting mind, that a tribunal thus organized, should be impartial, pure, and uncontaminated. They should engross public confidence, and be free from all suspicion of bias or prejudice towards either of the parties. But, can these valuable objects be secured, when the judges have already gone into an *ex parte* examination of the testimony—given their opinion on the facts with which the party is charged, unheard and undefended, and published the whole of their proceedings for the inspection of the world? Certainly not. No rational person will pretend to say, that those who have done so could ever sit in judgment again, to try the same individual for the same offence. Even had a majority of the committee delivered their opinions publicly in their individual capacities, whether that opinion were favorable or unfavorable to the accused, they could not afterwards, either in honor, in conscience, or in law, sit as judges upon his trial; as no man can try a cause legally and righteously which he has already prejudged. To do so, would be a violation of every principle of those laws which govern our natural, civil, and moral relations. Every idea of justice and equity, both natural and acquired, revolts at an idea so monstrous and absurd.

Whilst this subject was pending before the Senate as a judicial tribunal, every lover of his country, its constitution, and laws, would have forborne any remark, and patiently awaited the determination of that august body, for which, in common with his countrymen, the writer entertains the highest respect. Nor is it intended to derogate from that respect on the present occasion. By no act of the Senate has this report been sanctioned, or adopted by that body; but, on the contrary, by giving

it publicity in the public prints, it has been stripped of its official character, and permitted to find such a place in the estimation of the American people as it may deserve, after due enquiry, reflection, and discussion.

As a number of the points animadverted upon by a majority of the committee of the Senate, were elaborately discussed and settled in the House of Representatives, I shall forbear to notice them, in this place, only as they are incidentally connected with the principal points in controversy, as the nation has acknowledged itself perfectly satisfied upon those branches of the subject. I shall, however, by way of a general reply, endeavor to give a condensed outline of the origin and progress of the Seminole war, together with the grounds assumed by the friends of the government in the course of the investigation.

When the commanding general entered the territory of Florida, it was both the residence and receptacle of foreign incendiaries and savage hordes, who were the sworn enemies of the United States, and who refused to become parties to the treaty which was signed at Fort Jackson. It was also the asylum of traitors and outlaws, as well as our runaway negroes, and was used for the illicit purpose of introducing imported slaves into the United States, in violation of our laws.

From the year 1814 down to the termination of the Seminole war, this motley crew of black and red combatants had been uniformly instigated by British incendiaries, Spanish cupidity, and their own ferocity, to carry on a war of depredation and massacre upon the peaceful citizens of our frontier. Disregarding our frequent warnings, as well as overtures for peace, they retired within the Spanish line, where they were taught, by the duplicity of her agents, and our own forbearance, to believe themselves secure. There they plotted the destruction of those who had settled on the lands acquired by the treaty of Fort Jackson; there they enjoyed the plunder taken from our citizens, and made preparations to renew their bloody triumphs.

The success of their uninterrupted and murderous incursions is attested by the massacres on Duck river and at Fort Mims, and also by the fact, that, at the Mickasuky towns, there were found upon a war pole three hundred scalps of all ages, sexes, and conditions, besides fifty fresh scalps, which were recognized as the same that had been torn from the heads of lieut. Scott and his party! And permit me here to remark, that the destruction of this party was of the most tragical character; the children having been taken by them, and their brains dashed out against the sides of the boat in which they were captured.

In consequence of this horrible occurrence, so shocking to humanity, and the refusal of the Indians to comply with the demands of our government, to surrender the murderers of our frontier citizens, their forbearance became exhausted, and they resolved upon the adoption of such measures as were calculated to carry on the war with vigor and effect. In addition to this, the people of Georgia and Alabama were making repeated calls on the general government for protection. The representatives of the former loudly complained of the inadequate defence provided for them by the Union, and of the indolence and inefficacy with which the war had been conducted. They represented their exposed situation in the most feeling and pathetic terms, and insinuated that the operations of the commanding general were extremely tardy and neglectful in affording them the desired relief. In such a state of things, whatever might have been the original causes of the war, the general government could not hesitate to extend her arms for the protection and security of our bleeding frontiers.

From all these circumstances combined, I feel myself authorized to assert, that the Seminole war was entirely *defensive* in its character, notwithstanding the hesitation expressed by a majority of the committee of the Senate upon this subject. Although hostilities were carried on in the enemies' country, it was still a *defensive* war, and required no manifesto on our part, owing to the open hostilities of the enemy, and our having suffered the *first* act of aggression.(*m*)

Being an *Indian* war, and entirely *defensive* in its character, I shall endeavor to prove that the President of the United States possessed all the power and authority of this nation in its conduct and management.

Ever since the year 1795 the President has been invested by law with full and continuing powers to repel Indian invasions.(*n*) Under a similar authority were the campaigns of generals Wayne, Harmer, and St. Clair, prosecuted for the peace and security of the north western frontier.(*o*) as well as those which were carried on with the southern tribes. All these acts were approved by Congress, and completely met the views and wishes of the American people.

Although the President cannot declare war, yet he can repel it when waged by others, as he is entrusted by the constitution with the protection of the nation and the assertion of its

(*m*) Vattel, 293, 519; Martens, 273.
(*n*) 2d Vol. Laws United States, 479.
(*o*) 2d Vol. Laws United States, 74, 102.

rights. Were the United States invaded during the adjournment of the National Legislature, no one will hazard so much as to affirm that the Executive would be bound to await their meeting before he could legally interpose resistance. Such a doctrine would be ruinous in the extreme, even between sovereign and independent nations.

To repel invasion, then, is both a *legal* and *constitutional* duty of the Executive; and to require a declaration of war against savages, on such an occasion, would be without a precedent. It would be an acknowledgment of their independence, and that the usages of war entitled them to be treated as lawful enemies. We never have made such an acknowledgment; but, on the contrary, have extended our criminal and commercial laws within their territory; refused those who reside within our limits the privilege of disposing of their lands to any power except the United States, and have obligated ourselves to restrain them from hostilities with Spain. Furthermore, a war waged by savages can have no *lawful* form, effect, or object. Its progress is characterized by plunder, massacre, destruction, and revenge! Such a *war*, as well as the *means* employed in its prosecution, are *unlawful*; and a nation, when attacked by such enemies, is under no obligation whatever to extend towards them the laws and usages of *civilized* warfare. They may be hanged as banditti and robbers.(*p*)

If the President is bound by his duty to repel invasion without a declaration of war, he can lawfully enter a neutral territory in pursuit of the enemy without making war, and consequently without its being declared. This right of self-defence gives all the means which are necessary to its preservation; (*q*) and it must be conceded, that the exercise of a right is neither war, nor cause of war. In proof of this, we may lawfully enter neutral territory to pursue or attack an enemy, (*r*)—seize a neutral post to anticipate him—and pass through a neutral country by force, if necessary, without an act of war against the neutral. (*s*) The Executive, however, is the constitutional organ through which all this power is to be exercised. The rights of the nation are entrusted to his protection, and he is provided with the means necessary to its effectuation. He is made commander in chief of the land and naval forces, as well as the militia when called into actual service, and it is his bounden duty to see the laws (which include treaties) faithfully executed. Under this authority, he can assert any specific right, or possess

(*p*) Vattel 296, 297.
(*q*) Vattel, 241.
(*r*) Vattel, 318, 515.
(*s*) Vattel, 315.

any specific thing, which the United States is authorized to assert or possess, agreeably to treaty or the laws of nations. This principle was forcibly illustrated in taking possession of Mobile and West Florida, to which measure, both Congress and the nation gave their unqualified approbation.

But if it is insisted that war did exist, there can be no hesitation in believing that it was declared by Congress themselves. They sanctioned every preparatory measure of the President, and made it his imperious duty to proceed in its prosecution. On the 25th of March, 1818, he communicated a candid and full statement of all the information in his possession relative to the Seminole war, and stated, most explicitly, that our troops had received orders to enter Florida in pursuit of the enemy, and plainly intimated that the Spanish authority would not be respected where it was not maintained. Upon the receipt of this intelligence, they did not complain that the Executive had done wrong, or that their powers were usurped; but, on the contrary, directed an additional brigade of militia to be called into service—increased the pay of the Georgia troops already engaged in the war, and appropriated 90,000 dollars as a compensation for the services of mounted volunteers.

Here, then, is an acknowledgment that war existed; and as such, was tantamount to a declaration of war. (*t*) By raising troops and appropriating money, Congress put a construction upon the case, and acquiesced in its propriety. All the information obtained was communicated in compliance with their own resolution, and, by not interfering at that moment, they have rendered themselves responsible to the nation for the legality of the war, as well as for transferring it from our own to the territory of Spain.

Having satisfied the reader that the authority of Congress has not been usurped, and that the Executive was vested with full powers to prosecute this war without a declaration in form, I shall attempt, in the next place, to prove that the orders of the President transferred all those powers to the commanding General in Florida, and completely covered and justified all the measures which he adopted for its speedy and effectual termination.

For the purpose of arriving at a full understanding of the orders of the commanding General, it will be necessary to examine the state of affairs, as well as some of the orders which had been issued from the War Department anterior to his taking the command. From this examination, we are ena-

(*t*) 4th vol. Laws U. S. p. 835.

bled to learn that the savages had, for a considerable time, committed alarming depredations on the citizens of Georgia, and perpetrated a number of murders on her frontier settlements. That state petitioned the Union for relief; general Gaines was assigned to the command of that District, and the general government demanded *reparation* of the Indians for past aggressions.

On the 9th December, 1817, the War Department, after speaking of the hostilities of the Indians, wrote to general Gaines as follows: "Should the Indians, however, assemble in force on the Spanish side of the line, and persevere in committing hostilities within the limits of the United States, you will, in that event, *exercise a sound discretion as to the propriety of crossing the line*, for the purpose of attacking them and breaking up their towns."

On the 16th December, 1817, another letter says: "Should the Seminole Indians still refuse to make reparation for their outrages and depredations on the citizens of the United States, it is the wish of the President, that you consider yourself *at liberty to march across the Florida line*, and attack them within its limits, should it be found necessary: unless they should shelter themselves under a Spanish fort. In the last event, you will notify this department."

In the above situation of the orders, general Gaines was detached on duty to Amelia Island. Shortly after his departure, however, intelligence was received at the Department of War, of the massacre of Mrs. Garrett and family, and the inhuman butchery of the detachment under lieutenant Scott. *The very same day on which this melancholy information arrived*, (*u*) the Secretary of War wrote a letter to general Gaines, and another to general Jackson, inclosing an order to the latter to take command of the Southern Division.

On the 26th December, 1817, the War Department writes to general Gaines at Amelia Island, informing him that the Seminole war had "*assumed so serious an aspect*," "that they could not be brought to their reason without the actual use of force"—that general Jackson had been ordered to take the command, and directed him, "if his force was sufficient, *to penetrate through Florida, and co-operate in the attack on the Seminoles.*"

On the same 26th December, 1817, on which the above letter was written, orders were issued to general Jackson to take the command. They recited "the increasing display of hostile intentions by the Seminole Indians," and after stating

(*u*) See Mr. Tallmadge's speech, in House of Representatives, U. S.

the regular force under his command, as well as the supposed number of the enemy, authorises him to call on the Executives of the *adjacent states, for such additional military force as he might deem requisite to beat the enemy.*" This order also informed him, that general Gaines had been directed "to penetrate from Amelia Island through Florida, to the Seminole towns, *if his force would justify his engaging in offensive operations.* WITH THIS VIEW you may be prepared to concentrate your force, and *to adopt the necessary measures to terminate a conflict* which it has ever been the desire of the President, from considerations of humanity, to avoid, but which is now made necessary by their settled hostilities."

From these orders it will appear, that the circumstances which called the commanding general into the field induced the American cabinet to depart from the defensive and cautious policy which it had originally adopted, and produced the determination to prosecute the war with vigor and effect in the country of the Seminoles. The subsequent orders which were directed to the commanding general had no reference to those of general Gaines, save that of the 26th December, which is given above, and was transmitted to him whilst at Amelia Island. These orders then entirely superseded those given to general Gaines, and prove that the government had resolved to pursue a new system of operations against the enemy. The subsequent orders from the War Department are as follow:—

"16th January, 1818. The honor of the United States requires that the war with the Seminoles should be terminated speedily, and *with exemplary punishment* for hostilities so unprovoked. Orders were issued soon after my arrival here, directing the war to be carried on *within the limits of Florida*, should it be necessary to its speedy and effectual termination."

"29th January, 1818. A confident hope is entertained that *a speedy and successful termination* of the Indian war will follow your exertions."

"6th February, 1818. The honor of our army, as well as the interest of our country, require that it should be as *speedily terminated as practicable;* and the confidence reposed in your skill and promptitude assures us, that *peace will be restored on such conditions as will make it honorable and permanent.*"

If there should be any doubts still remaining as to the plenitude of the powers conferred on the commanding general, I would refer the reader to an extract from the President's mes-

sage, as well as one from a letter addressed to governor Bibb, by the Secretary at War. The message was communicated to Congress on the 25th of March, 1818, and, after some remarks relative to the Seminoles, says:—

"The enclosed documents shew, that the hostilities of this tribe were unprovoked; the offspring of a spirit long cherished, and often manifested, towards the United States; and that, in the present instance, it was *extending itself to other tribes*, and daily assuming a *more serious aspect*. As soon as the nature and object of this combination were perceived, the Major General commanding the Southern Division was ordered to the theatre of action, *charged with the management of the war, and vested with the powers necessary to give it effect*."

The letter to Governor Bibb is as follows:

"13th May, 1818. General Jackson is vested with *full powers to conduct the war in the manner he may judge best*."

With these ample and *discretionary* orders, and this satisfactory explanation of them, there can be no question that they authorise and justify every measure which was adopted during the Seminole war, and entirely acquit the commanding general of all censure and responsibility. Moreover, had the orders been defective in their import, the subsequent approval of the measures and motives of the commanding general, by the Executive, completely settles all controversy. It may not be improper also to remark, that the orders were precisely accommodated to the nature of the case, inasmuch as the officer to whom they were directed was about to carry the war into an almost impenetrable wilderness, from whence he could neither communicate, nor receive information, speedily, from the War Department.

The fact that the commanding general was vested with all the powers of the Executive in the prosecution of this war being settled, it only remains for me to enquire how far those powers have been exercised in conformity with the constitution, and laws of nations.

With regard to crossing the line and transferring the war into Florida, many of the observations already submitted in relation to the powers of the Executive, apply with justness and propriety. They prove that it is the duty of the government to protect the people, and that it has a right to all the *means* necessary to effect so valuable an object.(v) The safety of the people is the supreme law, and cannot be abrogated.

(v) Vattel, 22, 549.

The obligation to secure this end cannot be dispensed with, and nothing can destroy or impair the right to all the means. The right of security and self-preservation is paramount to all others. It is a *natural* right, anterior to the laws of nations, and it is a *perfect* right which can be asserted by force.

Upon these fundamental and immutable principles, as well as by virtue of the power vested in him by the constitution, is the President bound to repel invasion; and no one can hesitate to say that he was authorized in crossing the line, as the defensive war in which he was engaged could not otherwise be terminated. It was the denial of this principle that brought down such universal odium on the government of Massachusetts, during our late struggle with England. Such a doctrine was calculated to cripple the Executive department of our government in the most vital manner, and that too at a time when the enemies of our country may be prosecuting a war against us with every cruelty, vigor, and efficiency. Thus to deprive ourselves of the benefits secured by the laws of nations, renders us unable to contend with foreign powers upon equal terms, and we should abandon our exposed and frontier settlements to the mercy of a relentless and savage foe!

Crossing the line into Florida then was a measure which is completely justified by that *necessity* recognized by all writers upon the laws of nations. It was in Florida that the enemy resided; it was from thence they made their murderous incursions, and it was thence they retreated for security with their bloody trophies! Here were their towns and villages; their women and children, and all the resources which enabled them to carry on the war; it was here that our troops met with the principal resistance, and rescued from the savages a woman, who was the only survivor of the tragical destruction of lieutenant Scott and detachment. The purposes for which the war was commenced could not have been accomplished without transferring it to their territory; and it appears self-evident, that, if the law of nations will authorize us, in self-defence, to engage in such a war, it must also sanction all the *means* necessary to its effectual termination. The right of *security* obliges the government to protect its citizens, and carries with it and justifies all the measures necessary to be employed in its accomplishment. No principle is better established than this, and there is certainly none of more vital importance.

In consequence of the government having failed in their repeated and earnest efforts to negotiate a peace with the Indians, they were at last compelled to engage in the conflict

with great reluctance. *Force* was rendered absolutely necessary; and our duty to ourselves gave us a right to every thing essential to our own preservation.(*w*) Upon the principle of necessity and self-defence, we are authorized to enter the territory of a neutral power in quest of an enemy.(*x*) Much more should this be the case, when that territory is the retreat and residence of our irreconcilable and savage foe, and where alone the war can be speedily and effectually terminated. Was the contrary the practice, neighboring territories would become a safe asylum for banditti and robbers, who might carry on their murderous hostilities against us with the most perfect security.

The conduct of a neutral power must be altogether impartial to both of the belligerents; and if it is refused force may be resorted to without cause of complaint to the neutral.(*y*) It is absurd to say that it is necessary to declare war against the neutral, in order to put an end to such hostilities. The Executive and his commanding general pursued a course entirely different, and one which is in unison with the laws of nations. Although the neutrality of Spain had been prostituted by the weakness or corruption of her official agents, yet we entered her territory as friends,(*z*) to chastise the enemies of both nations. The commanding general never designed it as an act of war, nor did the President so consider it in his message to Congress, at their last session. The Spanish government did not construe it as war, nor did Mr. Pizarro or Don Onis complain of it as a measure of that description.

The fact was, that the authority of Spain over Florida had ceased, according to the confession of her own commanding officers, and become a *derelict* to all intents and purposes. Being unable or unwilling to restrain the savages, agreeably to treaty, we were at liberty to attack them as aggressors, and suppress them without going to war with that power. If the Indians do not occupy the ground of independent sovereignties, we had a right to adopt this course; and if they do, we have violated no neutral right of Spain in pursuing them to their towns and villages. Whether Spain then was neutral or belligerent, or the savages dependent or independent, we had a right to enter Florida in order to terminate the war; and this right is sustained by the proceedings of Congress in 1818, by the laws of the United States, and the laws of nations.

(*w*) Vattel, 517, 519. (*x*) Vattel, 318.
(*y*) Vattel, 332. (*z*) See General Jackson's letters, doc. p. 59, 61, 90.

Our rights on this occasion were greatly strengthened by our treaty with Spain, which obliged her to restrain *her* Indians from attacking the United States.(*a*) The engagements of a treaty impose a *perfect* obligation, and give a *perfect* right, which may be asserted by force.(*b*) Right and obligation are correlative terms. As Spain was obliged to restrain the Indians, we had a right to have them restrained; and the plea of inability to comply with her treaty, still compelled Spain to use all the means in her power, and to furnish us with every aid and facility towards doing ourselves that justice which we had a right to expect from her hands. In relation to the Indians, the two governments were in the situation of allies, mutually bound to restrain them within their respective limits. Owing to the non-compliance of Spain, her duties were devolved upon us, and we were entitled to all the means necessary to their performance. There was an urgent and indispensable *necessity* for the discharge of these duties; and it is upon this principle that one nation is authorized to seize a post of strength belonging to a neutral power; to put a garrison into it, either for defending itself against an enemy, or for the purpose of preventing him in his designs of seizing the place, when the neutral is unable to defend it.(*c*)

We gave Spain notice of the violations of her neutrality to our disadvantage by the British, negroes, and Indians. We complained to her officers of the occupation of Pensacola by Colonel Nichols; of the erection of the negro fort on the Appalachicola; of the aid and comfort afforded our savage enemies at her fortresses, and their co-operation with this motley horde in carrying on hostilities against the United States. In opposition to the most conclusive proof, they denied any criminal participation; but acknowledged the truth of the other facts, and pleaded *inability* to prevent their recurrence. Under such circumstances, our right to redress being established, and the delinquency of Spain notorious, the laws of nations authorized us to have recourse to force in the pursuit of that right; especially when it was out of our power to obtain peace by *amicable* means, and when we foresaw that a continued effort to that end would be entirely fruitless.(*d*) The President and his commanding general would have neglected their duty to the nation, in the most shameful manner, had they suffered a mathematical line to arrest their progress,

(*a*) 2d Vol. Laws of the United States, 266. (*b*) Vattel, 182.
(*c*) Vattel, 315. (*d*) Martens, 265, 268.

when the enemy was permitted to retreat beyond it for protection, as well as for the purpose of gaining time to rally, organize, and prepare for new acts of hostility. The war would have been endless had they been bound to respect an authority that did not exist; a sovereignty that was not asserted or exercised, and rights that were suffered to be usurped for the purpose of promoting the most cruel and savage war against the frontier settlements of the United States!

To translate the war into Florida became necessary, in order to convince the enemy that our forbearance had not proceeded from weakness, or from a consciousness of their security under Spanish protection. It was justified by the *necessity* of terminating the war; of preventing the repetition of robberies and massacres on our frontiers; and it was precisely the same description of *necessity* that authorised the occupation of the Spanish fortresses of St. Marks and Pensacola.

It is difficult to perceive how those who regard the Seminole country as neutral territory, and believe its occupation to be compatible with our neutral relations, in consequence of its being necessary to suppress the hostilities of the Indians, can deny the same *necessity* for taking possession of the Spanish posts. The same provocations existed to justify both; and if there was any difference, it is so small and indistinct, as to be unworthy of notice. In one case possession was taken of *territory*, and in the other of *garrisons*. Neutrality was equally violated in both instances; and those who object to the occupation of the fortresses, must, in principle, be opposed to crossing the line; and, if so, then to every measure which was adopted as indispensable to terminate the war, and give peace and security to our bleeding frontiers! Had the President and his commanding General awaited the meeting and decision of Congress, to authorise all these measures, the frontiers of Georgia and Alabama might yet be deluged with blood, and the Seminoles encamped in battle array on the banks of the Tennessee and Oconey! With such a prospect, and the enemy at hand, to talk of delay is to deride the mandates of nature and of nature's God.

For the purpose of obtaining some evidence of the views of the Executive in relation to the occupation of the Spanish posts, we will take the liberty of calling the attention of the reader to the order of the Navy Department to Commodore Patterson, directing him to afford his naval aid and co-operation to the Commanding General in Florida, in removing *obstructions* to a free communication between the *forts* and *forces* of the United States, and "*to adopt such further measures as the circumstances of the case or the developement of events*

may render necessary."(*e*) It is here worthy of notice, that, at the time this order was issued, the negro fort was demolished; and the naval detachment must have been intended, if necessary, to co-operate in the reduction of St. Marks, Pensacola, and St. Augustine, as there were no other positions on the Gulph upon which they could be brought to bear. It is also to be remarked, that they did co-operate, under this order, in the reduction of St. Marks and Pensacola. Furthermore, the commanding General communicated to the Executive the probable necessity of taking possession of both those fortresses.(*f*) and had the measures been disapproved, or had they contravened the policy of the Cabinet, they might have been countermanded and arrested in their progress.

The truth of the case was, that there existed the same *necessity* for the occupation of the posts that there was for destroying the Indian towns and villages. Nay, more, as they were *fortified* places, from whence the savages drew their supplies, and whence they fled for refuge and security. Situated as they were, the objects of crossing the line would have been defeated had they not been taken, and the negroes and Indians deprived of the aid and security which they received from the commandants. When our army retired from the country, they would again have been rallied, and made a descent upon our defenceless frontiers with additional ferocity.

The measure was indispensably necessary to the execution of the commanding General's orders, and the accomplishment of the objects for which the campaign had been commenced. His orders were,—to procure *a speedy and effectual termination of the war*, and a peace on such terms as would be *permanent* and *honorable* to the United States. These purposes could not be effected so long as the commandants of those posts furnished our enemy with supplies and munitions of war, and aided, abetted, and encouraged them in their hostilities against us. Being compelled, by the defalcation of Spain, to discharge her duties, we were entitled to all the means necessary to effect that purpose; and if the possession of St. Marks and Pensacola was essential to the restraint and suppression of the savages, we are completely justified in the adoption of the measure.

To the post of St. Marks, the negroes and Indians had fled for refuge and protection, after their defeat at Suwaney.—

(*e*) Appendix, No. 35.

(*f*) Pres. Mess. 2d Dec. 1818. Gen. Jackson's letters to Sec. at War. 25th March, 8th April, and 5th May, 1818.

The commanding General of the President had been informed by the Governor of Pensacola, through Captain Call,(*g*) that the Indians had demanded arms, ammunition, and provision, or the possession of the fortress; and that he presumed possession would be given, from *inability* to defend it. With this and other information, the commanding General, upon approaching the place, *requested* that it might be used as an American garrison during the war, which he was then prosecuting, for the chastisement of the common enemies of both nations. The commandant refused to comply, but acknowledged to Capt. Gadsden the justness of the Governor's apprehensions; that threats had been used by the negroes and Indians, and that he was unable to defend his post.(*h*)

In the course of the communication, the commanding General of the Executive became satisfied of the weakness as well as criminality of the commandant; that St. Marks was a depot for Indian supplies, and that the neutrality of Spain was perverted to the basest purposes.(*i*) Under these circumstances, he *demanded* the fortress to be surrendered. It was here that *Hillis Adjo* held his war councils in the commandant's quarters, and that the latter stimulated the Indians to robbery and murder, by promises of British protection, and by telling them of a declaration of war by Spain against the United States. The commandant was also the jailor of Hambly, whose crime was humanity to our citizens, and attachment to the American government! He acknowledged that he had "observed towards those barbarians a policy which had the appearance of a *warm friendship;*" but by which he had incurred "a considerable expense." Here it was, that foreign emissaries carried on their infernal intrigues; that the property plundered from the citizens of Georgia was publicly sold, and that previous contracts were made for it by the officers of the garrison, with a full knowledge of the violent and unlawful manner in which it was to be obtained! It was at this place that the Indians obtained supplies and munitions of war; that Luengo permitted the bloody clothes taken from the murdered comrades of Lieut. Scott to be vended to Spanish soldiery, and that the public stores and store-houses were appropriated for the benefit of our enemies.

The case in which it is justifiable to seize a neutral post existed. The enemy had threatened to occupy St. Marks,

(*g*) President's Message, 2d Dec. 1818, p. 48.
(*h*) Doc. Pres. Mess. 2d Dec. 1818, p. 261, 62, 63, 64, 67.
(*i*) Appendix, No. 24, 34.

and premeditated seizing upon the possession. Ambrister, at the head of 500 of his brigands, had approached it, to the alarm of the commandant, and they were still collecting for the purpose of taking it, so soon as the commanding General should withdraw his forces. In this state of things, *necessity* and the laws of nations justified its occupation. A belligerent can "seize, and temporarily occupy, and even garrison, the post of a neutral country, in order to prevent the designs of his enemy in seizing the place, whenever the sovereign of the country is not able to defend it."(*k*) Here the enemy wanted neither the inclination nor ability to execute their threat; and whether St. Marks was occupied by a neutral or belligerent, it was equally subject to be captured.

A neutral ship or fort may protect neutrals and their property, but they are not allowed to be prostituted for the security of the persons and property of enemies.(*l*) As a neutral, the commandant was bound to observe the most rigid impartiality towards the parties at war;(*m*) and inasmuch as the British and Indians had violated her neutrality and occupied her posts, we were, by the laws of nations, entitled to enjoy the same privilege. The Executive and his commanding General are therefore entirely justified in taking possession of this post, in order to prevent its further occupation by the negroes and Indians. It was upon the same principle that the great Frederick took Dresden, as a depot, in order to anticipate his enemies, when he understood that Russia and Austria intended an invasion and partition of his dominions.

With respect to the occupation of Pensacola, it is justified upon the same immutable principles of self-defence which authorised our taking possession of St. Marks. This place had also become the asylum of negroes and Indians, who drew from it supplies and munitions of war, and retreated to it for shelter and protection, upon the surrender of St. Marks.

After leaving a garrison in the place last mentioned, and defeating the negroes and Indians at Suwaney, the army returned to Fort Gadsden. Believing that the war was terminated, and the enemy dispersed, the Georgia militia, under General Glascock, were discharged, and every preparation was made by the commanding General for returning to the interior. He was, however, disappointed in his calculations upon this subject, as he was soon informed that Pensacola had become the asylum of the flying and defeated savages, and that

(*k*) Vattel, 315. (*l*) Vattel, 507. (*m*) Vattel, 497.

the Governor had refused the passage of provisions up the Escambia, destined for our starving troops stationed at Fort Crawford.

Upon the receipt of this intelligence, it was resolved to make a movement in that direction, *for the purpose of ascertaining the facts*, and scouring the country on the west side of the Appalachicola.(*n*) On the banks of the Escambia, the letter of Governor Bibb(*o*) reached the commanding General by an express, on the 22d of May, and, after detailing many murders and outrages which were daily committed on the frontiers of Alabama, remarks—"I should have mentioned that, in April, a house, within fifteen or twenty miles of Claiborne, was attacked; *the husband killed, and wife and two daughters wounded.* Thirty dollars, a quantity of bacon, and every article which could be conveyed away, taken and carried to Pensacola, *where, I believe, the murderers might still be found.*"—The sufferers were the family of Mr. Stokes, spoken of in the deposition of CharlesBaron,(*p*) who also states, that the plunder taken on that occasion was publicly sold to the inhabitants of Pensacola!! Furthermore, the commanding General was met on his route, by the protest of Governor Mazot,(*q*) on the 23d of May, complaining of the violation of his neutrality, and ordering him to retire from West Florida, accompanied with a *threat* to coerce him if he did not comply. In reply, the commanding General represented his views not to be inimical to Spain, in entering her territory, but for the purpose of suppressing those brigands and freebooters who were equally hostile and annoying to both nations.(*r*)

With all these facts before him, but particularly those contained in the letter of Governor Bibb, the commanding general could no longer hesitate, and, *for the first time*, formed the resolution of occupying Pensacola. The majority of the Senate's committee have grossly erred, when they state, (*s*) that this determination was formed at Fort Gadsden, after the commanding General had written to the Secretary of War from St. Marks that the war was at an end. The fact was, the enemy were beaten and dispersed, and, whilst at St. Marks,

(*n*) Pres. Mess. 28th Dec. 1818, Gen. Jackson to Sec. of War, May 5th, 1818.

(*o*) Letter of Gov. Bibb to Gen. Jackson, dated Fort Crawford, May 19th, 1818.

(*p*) Pres. Mess. 2d Dec. 1818. Depositions of ten witnesses in p. 102, 103, 104, 105, 110, 111, 112, particularly Charles Baron's deposition.

(*q*) Doc. Pres. Mess. 2d Dec. 1818, p. 87, 91.

(*r*) See Doc. Pres. Mess. 2d Dec. 1818, p. 59, 60, 61, 62, 63, 64, 65, 66, 67, 68 to 73, 90 to 94.

(*s*) Mr. Lacock's report, p. 7.

no facts had been *certainly* ascertained, to authorize the occupation of Pensacola. The information received was such as was calculated to arouse suspicion, and to justify the prudential and precautionary measure of dispatching Lt. Sands to Mobile for artillery, in order to take the place, should it be found necessary, upon further investigation. On the arrival of the commanding general at Fort Gadsden, it was rendered probable, by a letter from Mr. Doyle, a merchant of Pensacola, that a large number of Indians had recently visited that place; were committing depredations on the inhabitants, and receiving aid and comfort from the garrison. He also received intelligence, from various sources, of the murder of the 18 citizens on the Sepulgurs; of a family near Fort Claiborne, and that the citizens of Montgomery were fortifying themselves. In order *to ascertain the truth of these and other facts*, the commanding general resolved to move forward with the army himself, instead of returning to the interior. The facts proving to be true, upon the arrival of Governor Bibb's letter and Mazot's protest, it was determined to garrison the place with American troops.

It is astonishing that the majority of the committee should have so obviously misrepresented this transaction: as they might have been informed, that Governor Mazot's protest was the cause which induced the commanding general to occupy the fortress, had they adverted to the deposition of Dr. Bronaugh, (*t*) which they have published as an accompanying document to their report. But were the statement of a majority of the committee admitted to be true, it only proves, that the commanding general was mistaken as to the resources of the enemy to commit subsequent aggression, and that he could not foresee the prostitution and corruption which was practised at Pensacola. It does not, in the smallest degree, disprove the necessity and propriety of taking possession of the post, agreeably to the laws and usages of nations.

Upon his approach to Pensacola, the commanding general of the Executive found it to be the rendezvous for embodying hostile Negroes and Indians; that they had free egress and ingress to the fort, and that 500 had been recently seen in the town, many of whom were hostile, and equipped for war by Governor Mazot. The facts were, that the leaden aprons of their cannon had been distributed amongst them as a supply of lead; and, after being invigorated by supplies and arms from the public stores, they issued forth in marauding parties

(*t*) Mr. Lacock's Rep. S. U. S. p. 42.

upon our defenceless frontiers! A party had been pursued within sight of the fort, and, after being defeated, took refuge within its walls. Another, from the same place, had murdered eighteen of the citizens of Alabama; returned to it with their booty and scalps, and were ultimately sent across the bay by the governor, to enable them to elude the pursuit of the American army! A quantity of *cottonade and women's clothing* were brought to that place by the Indians, and publicly sold; notwithstanding it was notorious that those articles had just been taken from those whom they had butchered on the American frontier!!(*u*) To crown the whole, upon the surrender of the fortress, express provision was made, in the articles of capitulation, for the safety of a hostile Alabama chief, who was then within its walls, who was one of the instigators of the war, and who sent out the detachment which murdered Stokes and his family on the Escambia, about thirty miles from Pensacola!!!(*v*)

In examining the laws of nations as applicable to these facts, I find that there was a much greater necessity for occupying Pensacola than St. Marks. The President, by his commanding general, was justified in taking this step, as a measure of defence and self-preservation against our savage foes; and all the authorities and arguments which have been adduced in the case of St. Marks, apply, on the present occasion, with redoubled force and propriety.

The law of nations authorizes the seizure of provisions if necessary,(*w*) and certainly a post may be taken which obstructs their passage. As the existence of our army was endangered by the measure, and as we were performing the duties of Spain, there can be no question as to the right of depriving the commandant of Pensacola of the power of doing us a similar injury during the continuance of the war. When a belligerent invests a place of his enemy, he is allowed to interdict all intercourse with neutrals, for the lawful purpose of carrying into effect the object of the investment. Besiegers, too, do not hesitate to treat as prisoners, and even punish with death, all persons attempting to supply a city besieged.(*x*) If these principles are applied to an army in the field, they will authorize one belligerent to cut off the resources and pre-

(*u*) Pres. Mess. 28th Dec. 1818, p. 102.

(*v*) See depositions of Caro, Caso, P. Senac, W. Cooper, C. Le Jeune, G. Skeate, J. Barrelas, J. Bonnefay, Baron, p. 102 to 105. Hambly and Doyle, p. 110 to 112.

(*w*) Vattel, 166. (*x*) Vattel, 508.

vent the supplies of the other, by every means which may be suggested by necessity and the laws of self-preservation.

"On my enemy's being defeated, and too much weakened to escape me, if my neighbor affords him a retreat, allows him time to recover, and watch a favorable opportunity of making a second attack on my territories; this conduct, so pernicious to my safety and interests, would be incompatible with neutrality," and "gives me a right to enter his territories in quest of my enemy."(*y*)

Further, the law of nations "permits or tolerates every act which, in itself, is naturally adapted to the end of the war, without pausing to consider whether such hostility was requisite, useless, or superfluous, in that particular case, unless the exceptions to be made in that case were not *absolutely* clear."(*z*)

Had the commanding General of the Executive retired from West Florida, in consequence of the *threat* of governor Mazot, he would have violated his orders; inasmuch as he would have done only half his duty, by securing only one half of our exposed frontier. The war could not have been *effectually* and *speedily terminated*, nor the peace *honorable* and *permanent*. He would have covered himself with disgrace, and *tarnished the honor of the army and the nation*, which had been entrusted to his care and protection. The Indians and negroes would have acquired additional confidence, and, upon the withdrawal of our troops, would have renewed the tragical scenes of indiscriminate butchery upon our borders!

This *threat* of governor Mazot was amply sufficient, of itself, to determine the President and his commanding General to take possession of Pensacola. They were bound to anticipate it and prevent its execution.(*a*) Such a menace is considered a declaration of hostilities, and is the commencement of war, when made by one sovereign against another. It is not merely a declaration of hostilities; it is even regarded as an attack, and gives to him who is threatened the *defensive*, although he should strike the first blow.(*b*) A similar threat, by the King of Prussia, produced the war with France which was terminated by the battle of Jena.

So far, then, as this inquiry has progressed, I am authorized in asserting that the occupation of both those fortresses was effected in self-defence, and in perfect conformity with the law of nations. They had been alternately substituted for the Negro Fort on the Appalachicola; had become the laborato-

(*y*) Vattel, 515, 516. (*z*) Vattel, 559, 560. (*a*) Vattel, 453. (*b*) Martens, 273.

ries of war, where all its combustible materials were collected, and where they were organized for active service. They were, in reality, Indian forts, attempted to be protected by the Spanish flag; and had *they* been in the exclusive possession of our enemies, they could not have been more benefitted, nor *we* more seriously injured. Their seizure saved hundreds from the tomahawk and scalping knife; and if it were right for Congress to approbate the conduct of sailing-master *Loomis*, and vote him 5000 dollars, for blowing up the Negro Fort, it was certainly much more praise-worthy and important to occupy the posts of St. Marks and Pensacola.

Nor was the occupation of those fortresses an act of war. To require that it should have been preceded by a declaration of war, is, in effect, to deny the right altogether of taking possession of *neutral* fortresses. If war existed, it originated with the Spanish commandants and Indians, and we had a right to complain of the necessity imposed upon us of repelling the invasion. Had Spain done her duty, this necessity, on our part, would have been completely obviated. We acted in self-defence, and gave no cause of war. As an *Indian* war, it has been the uniform practice of the government, ever since its organization, to wage it without a declaration in form; and if Spain suffered in the course of its prosecution, it was the result of her own malconduct or neglect. The posts were seized upon the same principles on which Pensacola was taken whilst occupied by the British emissary Nichols, during the late war with England, agreeably to an order from the War Department, and of which Congress and Spain made no complaint. For similar reasons, did the American government take possession of Amelia Island, in order to wrest it out of the hands of outlaws and smugglers, and in consequence of the Spanish authorities being unable or unwilling to preserve their neutrality. If the latter measure was justifiable, much more so was the occupation of Pensacola, as "the lives of our citizens are of infinitely greater importance than the plunder of our commerce, and the security of our frontier of much greater interest than the prevention of smuggling."

Such acts of force are not the effects of war. They may sometimes produce it, but are always open to explanation and reparation.(c) They may be justified, or disavowed. As an illustration of the truth of this doctrine, I would beg leave to refer the reader to the case of Major Washington, who erected a fort on the Ohio in 1754, was attacked by the French com-

(c) Vattel, 293.

mander De Villier, and compelled to capitulate. A similar circumstance transpired in 1750, between the French and English forces in Nova Scotia; and with Governor Simcoe, who built a fort at the Rapids of the Maumee in 1794. I would also cite, as perfectly in point, the cases of Turk's Island, Falkland Islands, and Nootka Sound; the actions between the Leopard and the Chesapeake; the American frigate and Little Belt; the expedition of Colonel Smith against the Negroes and Indians in East Florida, in 1812; the occasional expeditions of the Georgia militia to Florida for similar purposes; and particularly that of *Colonel Williams* of Tennessee, who commanded a regiment of volunteers against the Creek Indians, without any authority from the general or state government. These events shew, that acts of violence, committed by commanders of portions of the armed force of different nations, each asserting the rights of their respective governments, are not such acts as must be preceded by a declaration of war.

Having become the allies of Spain by treaty, for the purpose of suppressing the hostilities of the Indians, we were authorized to take possession of these posts without affording any cause of war. Indeed, Spain, as I have before remarked, was bound to contribute every aid and facility in the preservation of our rights. "The sovereign who violates his engagements on pretences that are evidently frivolous, and who does not think it worth his while to allege any pretence whatever, to give a colorable gloss to his conduct, and cast a veil on his want of faith—it is such a sovereign who deserves to be treated as an enemy to the human race."(*d*) "To refuse any ally the succors due to him, without having any just cause to allege for such refusal, is doing him an injury, since it is a violation of the *perfect* right which we gave him by a formal engagement. As it is an obligation naturally incumbent on us to repair any damage caused by our fault, and especially by our own injustice, we are bound to indemnify an ally for all the losses he may have sustained in consequence of our unjust refusal."(*e*)

Public war exists between one sovereign and another, and is declared in form. If force is applied to the unauthorized acts of the officers of another nation, it is not war; nor is the nation to which the aggressors belong responsible for the acts, unless approved, or done in pursuance of previous orders. Spain has disavowed the conduct of her official agents in Flo-

(*d*) Vattel, 230. (*e*) Vattel, 327.

rida, and the American government has declared that a war was not intended with that nation. The two governments have acknowledged themselves at peace, and have since kept up a regular and friendly intercourse with each other. Had war existed, it could not yet be at an end, as no treaty of peace has been made; and the Spanish territory and fortresses, becoming a part of the national domain by conquest, should not have been surrendered without negociation.

The commanding General did not consider those measures as constituting war, nor were the officers and troops of the Spanish garrisons treated like conquered enemies,(*f*) as asserted in the 9th page of Mr. Lacock's report to the Senate. This idea is predicated upon a quotation of about half a sentence from General Jackson's letter to the Secretary of War, dated at Fort Montgomery, 2d June, 1818.(*g*) Had a majority of the committee consulted the whole of that document, they would have discovered that the commanding General bottomed all his operations on "the immutable principles of self-defence, authorized by the law of nature and of nations."

In his communications with the commandant of St. Marks, the commanding General says—"I come not as the enemy, but *friend* of Spain." "I have entered the territory of

(*f*) If the reader will advert to the documents accompanying the President's Message of 2d December, 1818, from page 119 to 123, inclusive, he will find the proposals which were made to General Jackson by Governor Mazot, for the capitulation of Pensacola; from which it appears, that it was the request of the Governor that he, with all his officers, both civil and military, should be transported to the Havana, *at the expense of the United States*.

The articles composing the terms upon which the fortress was surrendered, from 1 to 15, are for the security of persons, property, and records. The 17th, with the next additional one, are for the safety of the murderous and hostile chief Opoyhala, who was to be included with the persons to be transported to the Havana. The 18th provides for the freedom of religion; and the 19th that the American government shall restore the province and fortresses, in the same state in which they found them, after the objects of the war should have been accomplished, as explained in the official letters of General Jackson. And, finally, if any doubt should arise as to the meaning of the terms of the agreement, they should be construed in the manner most favorable to the Spaniards.

The Governor of Pensacola requested that the government should be dissolved; and in such a state of things it became absolutely necessary that some kind of civil authority should be organized for the protection of the lives, liberties, and property of the citizens, during our temporary occupation of the place. It was essential that revenue laws should be established, in order to "check the smuggling which had been carried on successfully, in that quarter, for many years past, and to admit the American merchant to an equal participation in trade." General Jackson would have failed in his duty, had he neglected a matter of so much importance. This was all that was contemplated, and it was effected in conformity with the laws and customs of Spain.—See his report, Pres. Mess. 2d Dec. 1818, p. 86, 7, 8.

(*g*) Pres. Mess. 2d Dec. 1818, p. 86.

Spain as a *friend*, to chastise a mutual enemy of both nations."(*h*) In his letters to the War Department, immediately after the occupation of St. Marks, he observes: "Personal rights and private property have been respected, and *the commandant and garrison furnished with transportation to Pensacola.*" Again: "In the spirit of friendship, I demanded its surrender to the army of the United States until the close of the war."(*i*) To the Governor of Pensacola, he stated that the principles of *self-defence* urged him to occupy that fortress, and that he had not been prompted to it "from a wish to extend the territorial limits of the United States, or from any unfriendly feeling on the part of the American Republic to the Spanish government."(*k*) Further: "Entering the territory of Spain to fight her battles, to relieve from bondage her subjects, and to chastise an Indian tribe whom she acknowledged, under existing treaties, she was bound to preserve at peace with the United States, I had every reason to expect that the American army would have been received as friends, and every facility afforded to ensure success to operations so interesting to both governments."(*l*)

Although the President and his commanding Generals cannot declare war, yet it is their duty to determine who and where their enemy is, and in self-defence to repel aggression. Their military operations were not directed against the government of Spain, but against her fortresses, which had become the strong holds of Negroes and Indians, and whose neutrality was perverted to the basest purposes. They seized them as the asylums and depots of our enemies; because they had ceased to be neutral, and were Indian forts to all intents and purposes.

The analogy attempted to be shewn by a majority of the Senate's committee(*m*) between the occupation of those fortresses and the capture of the Danish fleet, the dismemberment of Poland, and the subjugation of Europe by Bonaparte, is extremely unfortunate. In neither of those cases was the war *just* and *defensive* in its character, nor were the acts alluded to such as were dictated by necessity, and without which the war could not be terminated; neither were they in pursuit of a savage, defeated, and flying enemy. The Danish fleet was not in imminent danger of being seized by the enemy, and that government was in the undisturbed enjoyment of her

(*h*) Pres. Mess. 2d Dec. 1818, p. 61, 62, 63.
(*i*) Pres. Mess. 2d Dec. 1818, p. 51, 57. (*k*) Ib. p. 97. (*l*) Ib. p. 91, 92.
(*m*) Mr. Lacock's Report, p. 9.

rights and neutrality. The war against Poland was entirely unprovoked. She was engaged in reforming her own constitution; was at peace with Austria, Russia, and Prussia; and the fall of *Kosciusko* will perpetuate the infamy of those three powers who were engaged in her dismemberment. As to Bonaparte, it may be said that he admitted of no neutrals. His wars were those of an insatiable ambition; often waged without provocation, and having for their object, alone, the acquisition of dominion and power.

Upon the subject of the execution of the Indian chiefs, and the two foreign incendiaries, Arbuthnot and Ambrister, the facts and authorities appear to be equally clear and conclusive. One of the former was a prophet, "the crucifix of whose religion is the tomahawk and scalping knife; the libations of whose worship is the blood of the white man." He held a Brigadier General's commission from Great Britain, and employed his superstitious influence, and the promises of his trans-atlantic friends, to instigate his deluded brethren to deeds of rapine and massacre! The other headed the party who perpetrated the cold blooded butchery of Lt. Scott and his unfortunate companions!! Both had been active fomenters of the war, and were engaged in most of the murders committed on our frontier. These were the monsters who had been demanded to be surrendered by the treaty of Fort Jackson, which was ratified by the Senate, and carried into effect by the Congress of the United States. The majority of the Senate's Committee say—"they were hung without trial and with little ceremony." (*n*) The fact is, they were executed, as they ought to have been; as are all prisoners for similar offences, and agreeably to the laws and usages of nations.

Ambrister acknowledged himself to be the agent of the infamous Woodbine, and subaltern of M'Gregor; and that he came to Tampa Bay *to see the run-away negroes righted!* He wrote letters to Colonel Nichols and the Governor of New Providence, soliciting supplies and munitions of war, to enable those negroes to carry on their ferocious and desolating hostilities against our frontier settlements! He officiated as a military chief in disciplining the negroes at Suwaney; supplied them with arms, ammunition, &c. and sent out detachments to oppose the American troops. In addition, he commanded a corps of negroes in person, with the object of anticipating the commanding General in the occupation of St. Marks. He was taken in arms against the forces of the

(*n*) Mr. Lacock's Rep. p. 6.

United States; pleaded guilty to the charges alleged against him, and threw himself upon the mercy of the court. (*o*)

Arbuthnot was the successor of the incendiary Nichols, and confessed to Hambly, and the British Minister Mr. Bagot, that he came to Florida to act as an agent for the Indians.—He stimulated them to oppose the treaty of Fort Jackson, and was authorized, by a special power of attorney, approved, in writing, by the commandant of St. Marks, to officiate as the agent of the Indian tribes in Florida; to put in writing their grievances against the American government; deliver talks and hold councils of war, in which he presided as a chief; and was active on one occasion, when a white man, supposed to be friendly to the United States, was decreed to be tortured!! He corresponded with the British Minister in the United States—with Col. Nichols—the Governor General of the Havanna,—Governor Cameron of New Providence, and the Governor of St. Augustine; in which he made false representations of outrages and trespasses committed on the Indian territory by American citizens, and solicited supplies, and munitions of war, for the savages, in carrying on a war of extermination on our borders! He gave the Indians his advice; distributed knives, arms, and ammunition, to the principal chiefs, as also a *drum* to each of the hostile towns; and advised the Indians at Suwaney of the force and movements of the American army. The first outrages of the Seminoles may be dated from the arrival of this Firebrand and the prophet Francis amongst them from England!

These facts clearly identify those outlaws with the Indian chiefs, and equally subject them to the laws of retaliation. If there is any distinction to be made between them, it must be decidedly in favor of the Indians. "The guilt is in the heart that plots, and not in the hand that executes." The individual who disregards the mild customs of his nation, and the dictates of religion, so far as to instigate, aid, and abet the Negroes and Seminoles to the butchery of every age, sex, and condition, sins against light and knowledge, and is infinitely more criminal than the ignorant and untutored savage. A well settled principle of national law proves the parties to have been associates, and subject to the same penalty.

"It is true, every associate of my enemy is my enemy. It is of little consequence, whether any one makes war on me *directly* and in his own name, or under the auspices of another;

(*o*) See Pres. Mes. 2d and 28th Dec. 1818, and whole of the documents.

whatever rights war gives me against my principal enemies, it gives me against all his associates."

In order to explain what those rights are which we are justified in exercising on such an occasion, I beg leave to call the attention of the reader to two other extracts from the law of nations, which will place this branch of the subject beyond the reach of question:—

"When at war with a nation which observes no rules and grants no quarters, they may be chastised in the persons of those of them who may be taken; they are of the number of the guilty, and, by this rigor, the attempt may be made of bringing them to a sense of the laws of humanity." (*p*)

Again:—"We may refuse to spare the life of an enemy who has surrendered, when the enemy has been guilty of some enormous breach of the laws of nations, and *particularly when he has violated the laws of war.* (*q*)

Arbuthnot and Ambrister then deserved to suffer death, whether they are placed upon a level with the outlawed Red-sticks, or the runaway negroes, who were in an open state of rebellion. They were instigating this savage and motley horde to wage an *unjust* and *unlawful* war with the United States, without any authority; and as peace existed between England and this nation, they are to be esteemed as more criminal than murderers!

Crimes against the laws of war, for which prisoners may justly die, are:—1. Making war without authority, the war being lawful.—2. Making unlawful war; and, 3. Using means contrary to the laws of war. Upon these principles, the prisoners were subject to be hanged, even had war existed between this country and England; inasmuch as the *means* employed, as well as the *war itself*, were unjust and unlawful, and without authority.

War can only be carried on by the authority of the sovereign. (*r*) Those who commit hostilities and violence without a particular order, may be hung up as robbers and banditti, (*s*) and excluded from the rights of prisoners engaged in lawful war. (*t*) Those who fight contrary to their duty, or without its being their duty, the laws of nations equally condemn. This rule was asserted by the English, during our revolutionary war, in the case of colonel Ethan Allen; and if that man may be justly and lawfully executed who attacks the soldiers of the enemy without authority, how much more does he merit death, whose country being at peace with ours, in-

(*p*) Vattel, 520, 534. (*q*) Vattel, 520, 529. (*r*) Martens, 272.
(*s*) Vattel, 566. (*t*) Martens, 272, 280, 284.

stigates negroes and Indians to the murder of innocence, and every other act of barbarism?

War is a great calamity, and individuals should not be permitted to declare it, or aggravate its horrors by a violation of its clear and established rules. By these rules, the subject of a *neutral* power who wages war by land is punishable with death, unless in the service of a nation engaged in a *regular* war; and the principle has been extended so far, as not to permit a commission to exempt a *neutral* on the ocean from the same punishment for a similar transgression.

It is only in *lawful* wars, that prisoners can claim the benefit of the laws and usages of civilized nations. There must be a just cause, and lawful authority for engaging in its prosecution. It must not, at least, be an incursion for havoc and pillage; as its authors may be treated as robbers, and enemies of the human race. All have a right to join in punishing, suppressing, and even exterminating, such savages. (*u*) As the Seminoles could not wage a *lawful* war against the United States, they could not transfer such a right to the Indian chiefs, or to Arbuthnot and Ambrister. This savage war was so unjust and unauthorized, and the means employed so unlawful, that had Colonel Nichols or Woodbine been captured with a British commission in their pockets, it could not possibly have protected them from a sentence of death.

These arguments demonstrate, that Arbuthnot and Ambrister, as well as the Indian chiefs, merited death on the principle of retaliation, *for their own atrocities. The penalty fell upon the guilty*, and not upon the innocent. If the two former were British subjects, they violated the British and Spanish treaties; the laws of nature, and the laws of war. If they had forfeited their allegiance, they were upon a level with the Indian chiefs, and deserved one common fate.

But retaliation may be even exercised on the innocent, where the enemy has been guilty of a violation of the usages of war. (*v*) Whenever the enemy sets us the example of departing from the laws of war, we are at liberty to follow it. (*w*) This principle was recognized by General Washington, in his orders to General Sullivan, whom he detached against the Indians at an early period of our history. Its expediency and legality was also acknowledged in the case of Sir Charles Asgill; was adopted by the Congress of the revolution, (*x*) and by the Congresses of both Adams's (*y*) and Madison's (*z*) administrations.

(*u*) Vattel, 151, 152, 177, 282.
(*v*) Vattel, 321, Martens, 236, 283.
(*w*) Martens, 279.
(*x*) Marshall's History, 3d Vol. 391.
(*y*) 3d Vol. Laws U. S. 284.
(*z*) 4th Vol. Laws U. S. 536.

With regard to savages, this rule may be considered sound: that they should be made to feel any degree of force or punishment necessary to prevent them from robbing our citizens, and murdering our women and children; or, in other words, we should treat them, as prisoners, as they treat us. If we fail to inflict this portion of severity, we are wanting in our duty to our own citizens. Moreover, it is not to be expected, that the usages of *civilized* warfare can be extended to *savages*, who are not parties to them, and who acknowledge no obligation to observe them.

The objects of the war would have been but half accomplished, had not *exemplary punishment* been inflicted upon the authors of it, agreeably to the orders of the Executive. The war could not have been *successfully terminated*, nor the peace have been *honorable* and *permanent*. The source of the evil was the object; and it is the purpose of a *just* war to *prevent* as well as to *revenge* injuries.(*a*) It was necessary, not only to deter others, but to prevent the repetition of the same crimes, by the prisoners. This was particularly true in the present instance, when it is considered, that most of our Indian wars are to be ascribed to the excitement of foreign agents, unprincipled traders, and influential chiefs and prophets. As they are "held by no treaty, and bound by no ties; regardless of all faith, and influenced by no mercy, who would advise that such outlaws should be turned loose to remingle with the misguided savages, exhibiting themselves at once as the pledge of our weakness and our fears?" I presume there are none; and to attempt to prescribe the limits of humanity, or graduate too nicely the scale of necessity for our own military commanders, whilst other nations are governed by their own discretion, and views of national law, cannot but be denounced as a dangerous experiment.

When our government complained of the conduct of these two foreign incendiaries, the British Minister replied, that his government had no jurisdiction out of his own country, and consequently could not interpose its authority. The Spanish governors also asserted their incompetence to restrain them and the Indians; and had not the Executive and his commanding general resorted to the laws of retaliation, those atrocious offenders must have escaped with impunity, and, by an indirect sanction, been encouraged in their enormities. The consequence of that measure on the Indian chiefs, was, that the Ochesee warriors immediately surrendered, and the

(*a*) Vattel, 454, 576.

whole clan of Francis acknowledged their submission. They were treated humanely, furnished with transportation and provision, and sent into the Creek nation.

The principle upon which the prisoners were executed was avowed and approbated in the proclamation of General Hull; and if there were yet any doubts remaining as to its propriety, the decision of the British House of Lords, on the 11th of May last, would be entirely conclusive. They admitted that Arbuthnot and Ambrister acted without any authority or commission from their government; that they had forfeited their allegiance, and that there was no distinction to be made as to their liability to punishment; that they were outlaws, and altogether without the pale of their jurisdiction. This decision completely covers the whole ground assumed by the Executive and his commanding general, and is a severe satire upon the course taken by the opposition in Congress. The House of Lords disapprove of the execution of the culprits, upon the ground of unnecessary severity, and of informality in the trial of Ambrister; but they refused their protection, and admitted that they were identified with the savages, which, under the laws and usages of nations, subjected them to the penalty of death. Having practised their outrages and depredations, both on land and water, they merited the punishment which was inflicted upon them, as outlaws and as pirates!

If we had a right to resort to the law of retaliation on the Indian chiefs, no one who has the most ordinary claims to intelligence will venture to deny, that we could exercise a similar right in relation to those foreign incendiaries and firebrands of war. They were the principal authors of the war; they had identified themselves with the ferocious savages, *who observed none of the rules of civilized warfare;* who never gave quarter, and who took prisoners only for the purposes of torture! Will it be contended that we were authorized to execute the untutored savage, and not those who had instigated, aided, and abetted them in the war, and who were known to have enjoyed all the lights of education? Forbid it justice. Forbid it Heaven!

For the savages, some apology might be made on the score of barbarism and want of education; but for Arbuthnot and Ambrister no such plea could be sustained. The first were the deluded instruments of inhuman and wily intrigues; the last were the parents and projectors of the desolating war on our frontiers, and of all the atrocities which necessarily followed in their melancholy train. Contending with such enemies, every *christian* and *philanthropist* must approve their

execution, as promotive of the objects of humanity. If it is justifiable, by the laws of civil society, to put to death the common murderer, it must be admitted to be much more so, where the culprits have, in some cases, been principals, and in others accessaries, both before and after the fact, of massacreing men, women, and children. Mercy has no voice to plead for the perpetrators of such horrible crimes, but surrenders their lives to retributive justice; as they are disowned by their own government, have outraged their own natures, and "degraded themselves beneath the savage character, by descending to its level." Such a course is the dictate of common sense and legitimate warfare. "No writer on national law ever pretended to contradict it, and none of any reputation ever omitted to assert its validity."

But it is denied that the power of retaliation is vested in the commanding general. The laws of nations upon this point (as it has been upon all those already examined) is perfectly satisfactory: "When your army is out of your own territory, *the right of retaliation is in the commanding general;* and he has the right of sacrificing the lives of his enemies to his own safety, or that of his people, if he has to contend with *an inhuman enemy*, and treat them as his own people have been treated."(*b*)

It must have been for the punishment of such savages as the Seminoles, and their infamous associates, that this section of national law was provided, besides transferring the power of retaliation to the commanding general. The proceedings of general Washington, in the cases of Sir Charles Asgill and major Andre, prove, that he clearly understood himself as invested with this power. The Congress of the revolution resolved that it belonged to the commander in chief, and the commander of a separate army, respectively; and it was exercised by them, during that memorable period, without any other authority than that conferred by the law of nations.

To satisfy the reader upon this point, I would request him to advert to the cruelties of Delancy's corps; the retaliatory measures of the loyalists in New-York, and the execution of colonel Hayne at Charleston. The same power was exercised upon the ten tories taken at King's mountain; upon the emissaries sent by Sir Henry Clinton to corrupt the Pennsylvania line, and upon the ringleaders of the mutiny amongst the Jersey troops; who were all hung or shot without the formality of a trial.(*c*) The example of such retaliation on the savages and their associates is to be found in the cases of colonel

(*b*) Vattel, 321; Martens, 283. (*c*) Marshall's History, 4th Vol. 368.

Hamilton, who was taken at Vincennes; of Walter Butler, who was denied quarter as a leader of Indians;(*d*) as also in the massacre of Indians at Lancaster, by the Paxton Boys; that of the Shawanee chief Cornstalk, and Logan's relations, on the Ohio, and of the Cherokee chief Hangingmaw, on the Tennessee. On such occasions, where the *innocent* are subject to suffer for the guilty, great clemency is recommended; but in the case of the Indian chiefs; of Arbuthnot and Ambrister, there was no room for an exercise of this attribute, as they were making an expiation for their own crimes. The punishment fell upon the guilty, as the facts were admitted, and their criminality established beyond the reach of question.

A majority of the Senate's committee admit that Arbuthnot and Ambrister were identified with the savages, and merited the same treatment which should be extended to those with whom they were associated; but object to the execution on the score of humanity and religion, and of its being contrary to the practice of the American government.(*e*) They say that "retaliation in the United States has always been confined to *specified* acts of cruelty," and "it is not believed that any attempt has ever been made to retaliate for charges so *general* as those exhibited against Arbuthnot and Ambrister," "inciting the Indians to war."(*f*)

I have already shewn that the execution was authorized by the law of nations. This point is even conceded by the committee; and the examples of retaliation to which I have just referred, prove, that the execution was not contrary to the practice of the American government, or confined to *specified* acts of cruelty. Even in the example of captain Huddy, quoted by the majority of the committee, no *general* or *specific* charge was exhibited against him; but it was a case in which the innocent was about to suffer for the guilty. Very different was the situation of Arbuthnot and Ambrister. The penalty fell upon the guilty; and it was perfectly consistent with religion and humanity, as it contributed to establish a permanent peace, and saved hundreds from robbery and massacre. It was not upon the *general* charge of "inciting the Indians to war," as stated by a majority of the committee, that the two British outlaws were doomed to suffer death; but in consequence of their being found guilty of sundry *specifications* attached to that and other charges. The majority of the committee have quoted only one of the *general* charges exhibited,

(*d*) Marshall's History, 4th Vol. Appendix 13.
(*e*) Mr. Lacock's Report, p. 11. (*f*) Mr. Lacock's Report, p. 12.

omitting the *specifications* subjoined, as well as all the other charges and *specifications* which were preferred, and established by conclusive proof!!(*g*) By such a process as this, it would be no difficult task to convict the most unsullied innocence.

If any subject has ever been definitively settled, I think I may venture to assert, that this relative to retaliation has, both by precedent and the law of nations. In no case, save that of a *spy*, has this power been taken from the officers of our army: and this exception certainly strengthens those cases not excepted. The right of refusing quarter and inflicting death, where the usages of civilized warfare have been violated, has, in all ages, been invested in the commander in chief. It has been universally the case in Europe; and whilst the officers of foreign nations are permitted to exercise it, to deprive our own of the same power, would be to place the American people upon unequal ground in a national conflict; preclude us from treating them as they treated us, and indirectly encourage them in the practice of their enormities! The consequence would be, that foreign emissaries would instigate the savages to murder and depredation upon our borders with impunity; "Indian wars would never cease, and innocent blood would forever flow!"

If the commanding general did not possess the power to retaliate, the time, in many cases, would necessarily pass away at which it could avail him, and the effect intended to be produced upon the conduct of the enemy entirely defeated. This would be particularly the case when he should be located at a considerable distance from the seat of government, or in a besieged town, where any communication with the Executive or Congress was difficult, or entirely cut off by the enemy. The resolution proposed in the House of Representatives of the United States upon this subject, acknowledges the necessity of the Executive being clothed with the power to retaliate; which is only placing it one grade higher than in the case now before us. Even were it disposed of in this manner, the object of the resolution has been completely accomplished, as all the acts of the commanding general were expressly authorized and approved by the President of the United States.

Nor have our laws and constitution been violated. The individuals whose fate is here involved were parties to neither. They were found and executed beyond the territorial limits of

(*g*) President's Message, 2d Dec. 1818. Proceedings of the Special Court of Enquiry, p. 164.

the United States, where our laws and constitution have *no* operation, except between the American government and its own citizens, and where none others could claim their protection. Our courts could not try them, as they were never within our territory. They were not our citizens, and, consequently, not bound by our laws; they owed us no allegiance, and were entitled to no protection. All the authority we could claim, was under the laws and usages of nations, which our legislation cannot extend or annul. "The spirit of your institutions cannot pass into foreign territory, and give your civil tribunals criminal jurisdiction."(*h*) Congress may waive the benefits secured to them by the law of nations, but so long as those laws remain unchanged, their application in the field is an *Executive* duty, and must be vested in the President and his commanding generals. They should not be bound by rules which our enemies do not respect; but ought to be armed with retaliatory powers, in order to *revenge* past, and *prevent* future outrages.

I flatter myself the reader is now completely satisfied that the President and his commanding General were authorized, both by precedent and the law of nations, to exercise the power of retaliation on the prisoners, without the aid of a *Special Court of Enquiry*. It may be asked, then, why it was convened?

The Executive, through his commanding General, never doubted, for a moment, his authority to punish under the law of nations; but, as it was an act of great responsibility, he conceived it due to the world and the prisoners, that the truth of the allegations should be ascertained under the solemnity of an oath. The whole misunderstanding upon this branch of the subject arises out of our considering the tribunal before which the prisoners were arraigned, as a *Court Martial*, appointed to try and determine offences under the rules and articles of war.

The acts of Congress establishing these rules and articles create two descriptions of courts: one a *Court of Enquiry*, to report facts and opinions only; the other a *Court Martial*, to try and punish offences. They are both limited in their jurisdiction to our own officers and soldiers, and to breaches of the rules and articles of war. If the commander in chief disapproves of the decisions of the court martial, he may order a second, and cannot, without its sentence, punish an offender. This tribunal is also bound by the strict rules of evidence, whilst special courts and boards of officers obtain information without a rigid adherence to legal testimony.

(*h*) Vattel, 52.

The Executive, through his commanding General, being responsible for every proceeding against the enemy, *where the right to direct is complete*, but attended with doubt and difficulty, he frequently directs his officers to *enquire*, and express their opinions, as to a judicious exercise of that right. If the proposition relates to the movements of the army, it is denominated a *Board of Officers;* if it regards a prisoner taken from the enemy, it is then called a *Special Court*, or *Court of Enquiry*. This last tribunal has no *legal* creation or jurisdiction; it can pronounce no sentence, and could not either enlarge or curtail the rights of the Executive and his commanding General. It was altogether advisory in its character, and its opinions were not more obligatory than those of a council of war. If the President, through his commanding General, was authorized to act as he did, by the law of nations, the opinion of the *Court of Enquiry* could not possibly control him. In referring the case to them for their opinion, &c. if they misapprehended or enlarged their authority, or committed any errors, it could not abridge his powers, or purge the fault of the prisoners.

The *Court of Enquiry* in the case of Arbuthnot and Ambrister derived all their power and authority from the order of the commanding General. That order, without which this court could not have been created, entitles it a "SPECIAL COURT," and directs it to perform special duties; "to *record* all the documents and testimony in the several cases, and their *opinion* as to the guilt or innocence of the prisoners, and what punishment (if any) should be inflicted." It details Lt. Glassell as a "*Recorder*," by which a *Court of Enquiry* is invariably distinguished, in all military writers, from a *Court Martial;* the latter always having a *Judge Advocate*, as an essential officer, without whom no proceedings can be had, and no sentence pronounced.

This tribunal was, then, neither a General or Regimental Court Martial. The offences were committed by foreigners, and in a territory to which our rules and articles of war do not extend. The *specified* cases to which the jurisdiction of a Court Martial is confined, do not embrace that of Arbuthnot and Ambrister, and is consequently beyond its reach. Were those rules and articles even extended beyond our limits, and the Court of Enquiry clothed with all the powers of a Court Martial; yet the second sentence, in the case of Ambrister, was illegal, as the laws of Congress positively forbid the infliction of *stripes*.(*i*) If they were governed by the law of nations, (as they should have been,) it is still unauthorized, as that law prohibits punishment by *torture*. In every point of view, the se-

(*i*) Acts of May, 1812.

cond sentence was illegal; and the first, pronouncing the penalty of death, was the only one which could be properly carried into execution. The special court having no right to pronounce a sentence on the culprits at all, they could not either shield them from punishment, or inflict one less than that authorized by the law of nations.(*k*) This was the only law by which they could be punished, and the only power to retaliate known to that law is vested in the Executive and his commanding Generals. It recognizes no court martial, or other military tribunal, to try and punish for its violation. Even had the trial been informal, if the punishment was merited, and the power admitted to be in the commanding General, there could be no substantial ground for exception.

The examples of Major Andre and Colonel Hayne are entirely analogous to that under consideration. In both instances, similar tribunals were organized for the same *specific* purposes; and, in the first, General Washington gave the rules of evidence equal latitude.

In the trial of Arbuthnot and Ambrister, the testimony was such as to be perfectly admissible, agreeably to the most rigid rules of the common law; and would have been received by any criminal court in a case of life and death. It was clearly proved, by the letters of Arbuthnot, as well as by the witnesses, that a confederacy existed between the prisoners and the hostile savage chiefs, for stirring up, exciting, and encouraging the negroes and Indians to war and murder! The existence of a confederacy being once proved, there is no rule of evidence better established, than that the acts and declarations of one confederate, relative to the objects of the confederacy, are good testimony against another. This was conceded as sound law in the trials of Tooke and Hardy, and will be found to be settled in McNally, by a number of adjudicated cases. When it is recollected what were the sources from which the evidence was to be derived, it is a matter of great surprize to find it so strong and conclusive as it was presented before the Court of Enquiry.

It will here be distinctly perceived, that the commanding General, whilst surrounded by every difficulty and privation, in the almost impenetrable wilds of Florida, without the aid of authorities and counsel, understood the rules of evidence, as well as municipal and international law, much better than the opposition in Congress, who enjoyed all the above advantages, and who had those subjects, for several weeks, under their consideration.

(*k*) Vattel, 297, 391, 325, 365; Martens, 369, 280, 285.

The great inconsistency and diversity of sentiment which were expressed by the opposition upon the different points of controversy, were truly remarkable; and greatly fortifies the opinion, that the measures adopted in the commencement and termination of the Seminole war were legal and unexceptionable. One assumed the ground that the powers of Congress had been usurped; that the war had been declared by the Executive; threw the whole blame of the *original aggression on the citizens of Georgia!* and opposed our crossing the line into Florida, as well as every other measure growing out of the war, as *offensive* and unconstitutional! Some conceded the propriety of crossing the line, but objected to taking possession of the Spanish fortresses. On one hand, it was admitted, that the execution of the prisoners was just and proper, as also the capture of St. Marks; but, on the other, no apology could be found for the occupation of Pensacola! One acknowledged the legality and propriety of executing Ambrister, but could not consent to the same punishment being inflicted on Arbuthnot! And, strange to tell, a distinguished member gave his approbation to no one measure, save the execution of Ambrister!

This contrariety and inconsistency of opinion, amongst the opposition, certainly affords a very strong presumption that their positions were frivolous and untenable. It also shews the absurdity of their requiring our commanding Generals, whilst agitated by the hurry and confusion of war, to be acquainted with all the nice distinctions and subtle refinements of national law, upon which the most learned jurists of our country are unable to arrive at any kind of agreement. When orders are therefore given to a military officer, all that can be required are good intentions and fidelity of execution.

I shall now proceed to a consideration of those points, contained in the report of a majority of the Senate's committee, which have not been noticed in the preceding pages.

It is stated in the report to the Senate,(*l*) that, in consequence of the establishment of a line of forts near the Southern boundary of the United States, and the occupation of them by portions of our regular troops, "peace was maintained with the Indians until the spring or summer of 1817." This is not a slight inaccuracy, when we consider the report made by Lieutenant Loomis to Commodore Patterson, published amongst the documents accompanying the President's Message of the 28th of December, 1818.(*m*) By that statement it appears

(*l*) Page 1 (*m*) Page 67, 68, 69, 70. Letter from the Secretary of State to Mr. Erving, 28th Nov. 1818, page 15.

that Midshipman Loughborough, who was in a boat with four men, ascending the Appalachicola river, on the 17th July, 1816, was waylaid by the Indians; *when himself and three of his men were killed, and the other taken prisoner!* The last, Mr. Edward Daniels, O. S. was *tarred and burnt alive!!* It also appears, from the same documents,(*n*) that the governor of Georgia, (Mitchell,) in a letter to General Gaines, dated 5th February, 1817, complained that the noted Woodbine, a foreign incendiary, "was stirring up the Seminole Indians and Negroes to acts of hostility against this country." He says—"About 10 or 12 days ago a small party of those Indians entered the frontier of Wayne county, and *stole two horses and some cattle;* they were pursued by some of the inhabitants, who *peaceably* demanded a restoration of the stolen property; and, *instead of a compliance*, on the part of the Indians, *they immediately fired upon the whites, who retired without returning a shot.* ONE OF THE WHITES WAS MORTALLY WOUNDED." The same person, in his letter to the Secretary of War, under date of the 30th March, 1817,(*o*) further observes, that a party of these Indians had *murdered a woman and two children, and brought off some horses;* and then proceeds to state "that a British agent is now among these *hostile* Indians," and "that *he is also charged* with stimulating the Indians to their present hostile aspect,"

"The fact," says the Secretary of State, "that, *for several years*, they (meaning the Indians) have received shelter, assistance, supplies, and protection, in the practice of such hostilities, from the Spanish commandants in Florida, is clear and unquestionable."(*p*) Further: In a letter from A. Cullough to General Gaines, written at Fort Gaines, when speaking of the lower tribes of Indians, he says: "*They have stolen almost every horse belonging to the citizens. They have scared them from the fields which they have cleared, and have taken possession of their houses. They are now stealing horses, cattle, and hogs, from the Georgia lines, and have killed one or two families on the St. Tillas.*"(*q*)

General Gaines, in a letter to Mr. A. J. Dallas, secretary of war, dated 22d of May, 1815, states, that the Indians had *killed two of our citizens*,(*r*) [Johnson and McGasky,] and on the same day it appears that a hostile party surprised and took, from the immediate vicinity of Colonel Clinch's camp, *two*

(*n*) p. 171. (*o*) Doc. Pres. Mess. 28th Dec. 1818, p. 172.
(*p*) Secretary of State, 28th Nov. 1818, p. 18, 19.
(*q*) Pres. Mess. 28th Dec. p. 175.
(*r*) Pres. Mess. 28th Dec. 1818, p. 43.

privates and thirty head of cattle, which last were purchased for the subsistence of his troops.(*s*) Moreover, W. Hambly, in a communication to Arbuthnot, in May, 1817, asserts that the Indians had committed *twenty most cruel murders on men, women, and children*, and stole *one hundred horses*, on the frontiers of the United States;(*t*) many of *which outrages must have been perpetrated previous to the spring or summer of that year.*

The British incendiary, Colonel Nichols, landed at Pensacola early in 1815, and invited to his standard, by public proclamations, all the runaway negroes from Florida and Georgia, savages, pirates, and traitors to their country, for the purpose of waging an exterminating war on our borders. Upon General Jackson's approach to that place, he evacuated the fort to be blown up, and erected the Negro Fort on the Appalachicola, as a rallying point, from whence his motley horde of renegadoes and malefactors were to make their murderous incursions on our frontier settlements. Both on the Appalachicola and St. Juan rivers there were separate establishments of negroes, who had been enticed by Colonel Nichols and others from their owners in Florida, Louisiana, and Georgia, and were in an open state of rebellion. The number taken from the citizens of the United States has been estimated at *three or four hundred*, which were sent to Trinidad and Nova Scotia.(*u*) As a stimulant to war, Colonel Nichols induced the Seminoles and Red Sticks to believe, that, under the treaty of Ghent, they were entitled to all the lands they held in 1811, which had been ceded to us six months before the treaty was made; and disaffected them as much as possible to the treaty of Fort Jackson.

In a letter of Colonel Hawkins, of the 24th of May, 1815, he tells Nichols that he had, on an *ex parte* hearing, "armed the Seminoles, and *given orders to put to death, without mercy, any one molesting them.* This, says the agent, is cruelty without example; scalping men, women, and children, for troubling or vexing only, and the executioners the judges!

"To gratify their revenge, the good and innocent citizens on the frontier are to be the victims of such barbarity. Suppose a banditti were to commit a violent outrage, such as that of the 2d of April, are we to charge it on the unoffending people of the frontiers, and kill them without mercy, if we could not find out the guilty? *You have issued the order; provided and issued munitions of war for its execution;* prepared and

(*s*) Ib. p. 64. (*t*) Ib. p. 124.
(*u*) Pres. Mess. 28th Dec. 1818, p. 42, 45.

provisioned a strong hold to retire upon in case of superior force appearing, to protect them in this mode of gratifying their revenge." In the same page, after detailing many outrages, Colonel Hawkins remarks: "As late as the 17th of April, *one man was killed and four wounded*, on the post road; *our wagons twice attacked, and one wagoner killed; several horses taken*, and carried, as reported, to your depot, at the very time the wagons were carrying seed corn for the Indians, and flour for the support of nearly 5000 totally destitute of food."(*r*)

From these documents it is evident, that a majority of the Senate's committee have made an egregious mistake, when they state that peace existed with the Indians from the treaty of Fort Jackson, in 1814, until the spring or summer of 1817. The truth of the case was, we never had negociated a peace with the outlawed Red Sticks. They refused to become parties to the treaty of Fort Jackson, and fled to Florida, where they were afforded an asylum, and from whence they made frequent descents upon our frontiers, committing robberies, murdering men and women, and staining the cradle with the blood of the infant! There were frequent complaints, to this effect, in the newspapers of Georgia, during that period; and if the facts of 350 scalps found at Mickasuky, and those decorating a red pole in the public square of Fowl Town, are adverted to, it would appear that the war with the Red Sticks and Seminoles was only a continuation of the war of 1812.

Governor Mitchell informs us, in his affidavit,(*s*) that, early in March, 1817, he resigned "the government of Georgia," and accepted the appointment of Indian Agent! From his several communications, it cannot but be perceived what gradations of opinion arise from the various situations in which the most honest men may be placed. Mr. Mitchell was governor of Georgia when the communication of the 5th of February, 1817, was made, in which he represents the conduct of the whites as *peaceable*, and that of the Indians as violent and outrageous. Early in March he resigns, and accepts an Indian agency! and on the 30th of the same month, and from the same place, writes in language much less criminating in relation to the Indians, when he observes that the British Agent is "*charged* with *stimulating the Indians* to their present hostile aspect."

The majority of the committee say, "it is difficult to determine, with certainty, who commenced those hostilities, or

(*r*) Pres. Mess. 28th Dec. 1818, page 39.
(*s*) Mr. Lacock's Report, S. U. S. p. 35.

on whom the greatest injuries were inflicted."(*t*) Mr. Mitchell remarks, "the peace of the frontier of Georgia has always been exposed and disturbed more or less, by acts of violence, committed as well by the whites as the Indians."(*u*) And further: "I believe the first outrage committed on the frontier of Georgia, after the treaty of Fort Jackson, was by these banditti, who plundered a party of the Seminole Indians, on their way to Georgia for the purpose of trade, and killed one of them."(*v*) In this statement, the Indian agent appears to throw the whole blame, in the commencement of the war, on the citizens of the United States! Surely it was nothing but fair, as well as his duty, to have made known to the government his opinion on this subject, when writing his letter of the 5th of February, 1817. He was then governor of Georgia; now Indian agent. Let the two letters and affidavit be compared, and it will be readily discovered how imperceptibly the feelings and sentiments of individuals will change, corresponding with a revolution in their condition.

Complaints were made to the government, not only by Governor Mitchell, but from many other sources, that the Indians were committing every injury and outrage upon our borders. No evidence can be found in the documents accompanying the President's two messages, relative to the plundering and murder of an Indian, mentioned by Mr. Mitchell as the cause of the massacre of Mrs. Garrett and her children, on the 24th of July, 1817. It is probable that this statement may be correct; yet, in the calls which were made on the Executive, for protection, by the state of Georgia, no such apology was interposed; and, consequently, the President is not responsible on the ground that he possessed that information.

It is really difficult to conceive why the causes of the war were adverted to at all by a majority of the Senate's committee. Though expected to operate unfavorably to the Executive branch of the government, yet a moment's reflection would have satisfied them that no such effect could be produced, inasmuch as the Congress of the United States had given their verdict of approbation, by adopting the resolution of Mr. Cobb, providing men and money for the prosecution of the war, in the spring of 1818. Then was the time to have enquired who was responsible for the commencement of hostilities; and if the fault had attached to the citizens of Georgia, a peace might have been obtained by making, in the first place, an adequate reparation to the Indians. But, after the course of the Executive was clearly understood and

(*t*) p. 2. (*u*) p. 34. (*v*) p. 35.

approved by Congress, it seems passing strange that a majority of the committee should have insinuated any censure, either against him or his commanding generals; particularly when no instance is to be found on record where such a measure was adopted in relation to any of the Indian wars in which we have been engaged.

The law regulating our intercourse with the Indians(*w*) provides a peaceable mode by which justice shall be done them for injuries committed on their persons and property. In that mode they should seek reparation; but, instead of doing so, their practice has been, to take the means of redress into their own hands, by robberies, and the indiscriminate murder of men, women, and children! When affairs reach this extremity, and the Executive is called on for protection, not only by Congress, but the defenceless frontier, what step should have been taken? Most evidently the one which was adopted. By the constitution and laws of his country, he was officially bound to put an effectual termination to a state of things so dangerous and distressing.

The Indians, who are savage and impatient, impetuous and warlike in their habits, not only refused to await the ordinary course of justice for redress, but they would not, on their part, comply with any demand for reparation, agreeably to the provisions of the intercourse law between them and the citizens of the United States. Our innocent and unoffending citizens had been butchered in the most shocking manner.—Mrs. Garrett and family, as well as Lieutenant Scott and his unfortunate companions, had been massacred. War existed with the Seminoles; and, like every other war, and agreeably to its savage character, the "*honor* of the United States" required that it "should be terminated *speedily* for hostilities so unprovoked."(*x*) And, again, orders were issued, "directing the war to be carried on *within the limits of Florida*, should it be necessary to its speedy and effectual termination."(*y*) Whether the war was rightfully commenced on our part, or not, was not a matter of consideration for the commanding generals. As subordinate officers of the Executive, they were vested with no discretion or power of judging relative to its necessity or expediency. Their whole duty consisted in a strict obedience to the orders directed to them by their superiors.

General Gaines had been placed on the southern frontier for the purpose of preserving peace with the Indians, if it could be effected agreeably to the import and intention of the

(*w*) Act of Congress, 1802, ch. 13.
(*x*) Appendix, Letter from Secretary of War, 16th Jan. 1818. (*y*) Ib.

intercourse law,(z) and to repel invasion, under the orders and direction of the President. Like General Jackson, he has been reared on the soil of Tennessee; and it is believed that few states or nations can boast of a more meritorious and patriotic officer. He has been educated to arms from his youth; has fought and bled in defence of his country's rights, and there is none more scrupulously observant of the orders of his superiors. He is at present at his post on the southern frontier; and the writer has no means of procuring an inspection of many of the orders under which he acted, as well as several of his communications with the General Government. It is evident, that some of those papers have not hitherto been published amongst the Documents, as may be discovered by any one who will give them a careful perusal.

In one of his letters to the Secretary of War, General Gaines says: "I felt myself fully authorised to adopt the only measures which long experience has proven to be adequate to put a stop to their outrages;"(a) and again: "*The steps I have taken are known to the Department of War.*" The nature of these measures can be ascertained by the observations of the Secretary of War,(b) in a communication to General Gaines:—"I have the honor to acknowledge the receipt of your letter of the 1st instant,(c) covering a copy of a reply which was made by ten of the Seminole towns, to the demand made by you on them for the surrender of the murderers of some of our citizens."(d) The Indians refused to comply with this demand,(e) and General Gaines was authorised, at his discretion, to remove those of them who were still remaining on the lands which they had ceded to the United States.

In the exercise of the above discretion, (and we have no right to suppose but that there was an honest exercise of it,) General Gaines ordered Major Twiggs to Fowl Town.(f) This affair is certainly far from being fully and correctly stated in the report to the Senate, and requires considerable correction.

In a "Concise Narrative, published by an officer attached to the expedition," it is stated, that, soon after the evacuation of Fort Scott, and the concentration of the regular forces at Fort Montgomery, agreeably to an order from the Secretary of War, information was received from Governor Mitchell, as almost from every other quarter, that the savages of Florida

(z) Act of Congress, 1802, ch. 13.
(a) Dec. 15th, 1817, Doc. Pres. Mess. 2d Dec. 1818, p. 12.
(b) Oct. 30th, 1817. Pres. Mess. 2d Dec. 1818, p. 33.
(c) Not found amongst the Documents. (d) Act of Congress, 1802, ch. 13.
(e) Mr. Lacock's Report, p. 2. (f) Ib.

were making irregular incursions upon our frontier; committing murders and depredations of every description, and that amongst the sufferers were Mrs. Garrett and her children. A party of hostile warriors had entered Fort Scott; three houses were consumed, and Perryman, the friendly chief, who had been left to take care of the buildings, was grossly abused, and plundered of every article of value. The lives of the settlers on the lands ceded by the treaty of Fort Jackson were threatened, and information was communicated through letters from Hambly and Doyle; (*g*) that the Indians, instigated by Arbuthnot, were embodying on the Appalachicola, with hostile intentions against the frontier settlements.

These facts induced the re-occupation of Fort Scott, to which place, the different chiefs of the Seminole towns were invited by General Gaines to listen to a friendly talk from the President of the United States. This invitation was rejected from a settled spirit of hostility, evinced by all the chiefs, amongst whom was that of Fowl Town. He represented Flint River as his territorial boundary, and threatened violence if the Americans attempted to cross it; that he was commanded by the Great Spirit to defend that soil, and that he should do so at every hazard. The murderers who had been demanded to be surrendered by our government, he justified, on the score of retaliation, for the pretended murder of his red brethren, for three of whom no atonement had been made. On the arrival of the first Brigade on Flint River, for the re-occupation of Fort Scott, a second runner was despatched by General Gaines to invite the chief of Fowl Town to a friendly interview. This was particularly desirable, as his warriors had committed the principal depredations on our borders; but the overture was promptly rejected, and he stated, "that he had said all he had to say to the Americans." (*h*)

The talk which General Gaines sent to the Seminole towns from Fort Scott was transmitted, with his letter, to the Government, under date of 2d December, 1817. (*i*) In this talk, he tells the Indians that they had refused to surrender the murderers, and that the President had authorized the military to arrest them; (*j*) that he "had long known we had enemies East of this [Flint] river," and that he likewise knew we had friends; "but they are so mixed together, we cannot always distinguish one from the other." He then advises the friendly Indians to make themselves known, and use their best

(*g*) Pres. Mess. 28th Dec. 1818, p. 118.
(*h*) Narrative, p. 12, 13, 14.
(*j*) Act of Congress, 1802, ch. 13.
(*i*) Doc. 2d Dec. 1818, p. 7, 9.

efforts to prevent outrages, by separating themselves from our enemies, agreeably to the orders and wishes of the President. In order to ascertain their disposition upon these subjects, General Gaines had repeatedly solicited a conference with the Chief of Fowl Town, which he obstinately refused, though he resided only 14 miles from Fort Scott, where the former was stationed. As the town of which he was chief was situated immediately in his neighborhood, it was important that the disposition of its warriors should be distinctly understood, and, if possible, be conciliated.

After this refusal or evasion to confer, affording evidence of hostility, General Gaines ordered Maj. Twiggs, with a party of men, to go to the town, and, in the first place, to use the gentle means of persuasion, in order to induce him to a conference; but if that course did not succeed, he was directed to arrest and bring him forcibly to Fort Scott. His orders were not to fire on the town, unless they fired on him.—The fact was, *the Indians fired first*, and retreated to the woods. It is believed evidence of these facts, if search is made, can be found on file in the War Office, in the communications of General Gaines to that Department.

Under the circumstances which existed at the commencement of this war, neither the Executive nor General Gaines was censurable—particularly the latter, inasmuch as it is admitted in the Report to the Senate, that he acted in conformity with his orders. There was, both before, and at the time of Maj. Twiggs's visit to Fowl Town, sufficient evidence of the hostility of those Indians. In a letter of George Perryman to Lt. Sands, dated 24th of February, 1817, it is stated, that there were seen at that place *many horses, hogs, and cattle, which were stolen from the State of Georgia*, and that such outrages had been frequently repeated.(*k*) About the 2d of April, 1818, there was found in the public square of that town *a red pole, barbarously decorated with the scalps of both sexes, which had been taken at different periods preceding!!* (*l*) There was also discovered, amongst the articles belonging to the chief, a British uniform coat, with a pair of gold epaulets, and a certificate signed by a British Captain of Marines, "Robert White, in the absence of Col. Nichols," stating that *the chief had always been a true and faithful friend to the British.* (*m*) They were no doubt greatly disaffected at the time

(*k*) Pres. Mess. 28th Dec. 1818, p. 118, 171.
(*l*) Pres. Mess. 28th Dec. 1818, p. 83. Also a statement by Hambly and Doyle, p. 108.
(*m*) Pres. Mess. 28th Dec. 1818, p. 174.

Major Twiggs made his visit to the town, but were afraid to give any open indications of hostility. It was this fear that induced them to counterfeit appearances of friendship, thereby securing a convenient asylum, from whence to issue without discovery, to satiate their ferocity with blood and plunder; after which, they would take flight to some remote town or fastness for shelter and security.

The Indian agent informs us,(*n*) that the chief of Fowl Town made a friendly talk in July; that he was advised of it on the last of August, and intended to send for this and two other chiefs; who must have been suspected, in consequence of their not having attended the desired conference of the agent at Fort Hawkins. Before he could have an opportunity of seeing the chiefs, Maj. Twiggs, he states, made his visit to the town; and this affair, he says, "was, I conceive, the immediate cause of the Seminole war." (*o*) It is here worthy of remark, that the Report to the Senate, as well as the documents annexed, are barren of dates, and therefore the precise time at which the affair at Fowl Town transpired cannot be certainly ascertained; but, from the letter of the Secretary of War, (*p*) acknowledging the receipt of information relative to that transaction, it must have been about the 20th of November, 1817. The Honorable Secretary, whilst he regrets the necessity of the effusion of blood, hopes, "that prompt measures, and the display of such an efficient force in that quarter, will induce the Indians to abstain from further depredations, and to sue for peace."

But to return to Mr. Mitchell's conception of the cause of the Seminole war. It is believed that a much more correct view was taken of this subject whilst Governor of Georgia, particularly, when speaking of a British agent, in his letter of the 5th February, (*q*) before the visit to Fowl Town had been made, and in which he informs us, that the Indians *had mortally wounded one of our citizens!*

Before dismissing that part of the report to the Senate, relative to the conduct of the Executive and his officers in the commencement of the war, and the affair of Fowl Town, it is proper to remark upon the phraseology adopted by a majority of the committee, in describing the second excursion of our troops to the town abovementioned, under the command of Captain M'Intosh. The language used in the report is as follows:—"A second visit to the same village, as he

(*n*) Mr Lacock's Report, to S. U. S. p. 35. (*o*) Ib. p. 35.
(*p*) 9th December, 1817, Pres. Mess. 2d Dec. 1818, p. 36.
(*q*) Mr. Lacock's Report to S. U. S. p. 32.

states," (meaning M'Intosh,) " for the purpose of obtaining property." (*r*)

From the character of the phraseology here employed it might be understood by some that the detachment under captain M'Intosh was a lawless, predatory, and plundering party. General Gaines was in command on that occasion, and I know him to be too correct and honorable a man to set on foot an expedition merely for the sake of plunder. Nor does the witness, Captain M'Intosh, say so. His expressions are:— " corn, cattle, and other provisions, I have no hesitancy in saying, was the object of this visit." (*s*) It has already been remarked, that this town had acted with hostility towards the United States, by well grounded imputations of murders; by refusing a conference, or coming to any kind of explanation, and by actually firing on our troops when on a visit to that place! On the second visit, as it is termed, they were known to be inimical; and as our troops at Fort Scott were in want of provisions for subsistence, it surely will not be denied that we had a right to take them from our enemies.

It is insinuated in the 1st and 2d pages of the Report to the Senate, that censure attaches somewhere for the withdrawal of the regular forces from the posts on the Georgia frontier, and concentrating them at Fort Montgomery, on the Alabama river, a considerable distance west of the Georgia line. The majority of the committee are to be informed that this was done conformably to instructions from the Secretary of War, (*t*) given under expectations of troubles from another quarter. If any blame can attach on this ground, it is attributable to the War Department, and not to the commanding General, who, in making that disposition of his troops, was governed by the orders of his superiors.

The orders issued to the commanding general from the War Department were entirely discretionary. They directed him to take the *necessary* measures to terminate the war, *speedily* and successfully, with *exemplary punishment* for unprovoked hostilities, and to establish a peace on conditions that would be *honorable* and *permanent*, and such as were required by the honor and interest of the country.(*u*) They gave an estimate of the strength of the enemy, upon the conjecture of general Gaines, and authorized general Jackson to call on the governors of the adjacent states *for such additional military force as he might deem necessary to beat the enemy.*(*v*)

(*r*) Ib. p. 2. (*s*) Ib. p. 30.
(*t*) Letters from Secretary of War, Sept. 22d, and October 2d, 1816. Appendix, No. 31, 32.
(*u*) Appendix, No. 1, 2, 3, 17, 18, (*v*) Appendix, No. 1 and 4.

The order of the Secretary of War, calling general Jackson to the command of the Southern Division, was received by him at Nashville, on the 11th of January, 1818;(*w*) when he appealed to the patriotism of the militia who had served with him in former campaigns, requesting them to take up arms in defence of their country.(*x*) At that moment the regular force, under the command of major Muhlenburgh, which had attempted to ascend the Appalachicola river, immediately after the butchery of lieutenant Scott and party, was in imminent danger of being destroyed by the overwhelming number of the enemy by which it was surrounded.(*y*) No time was therefore to be lost in affording the desired relief. *On the very same day on which the order arrived,* general Jackson accordingly wrote in haste to the governor of Tennessee,(*z*) informing him of the appeal he had made to his old comrades in arms, requesting them to follow him immediately into the field;(*a*) which measure received the governor's hearty approval and co-operation.(*b*) At this time the governor was *at Knoxville, at least two hundred miles from Nashville,*(*c*) although he is stated in the Report to the Senate, page 2d, to have been at the place last mentioned.

It is the manner, however, in which those troops were raised, and the officers appointed, that forms the most prominent subject for censure by a majority of the Senate's committee; and, in their animadversions, they accuse general Gaines of having acted "without orders," and general Jackson "in disregard of positive orders, the constitution and laws."(*d*)

The serious nature of these charges, by the high authority from which they emanated, not only against the two commanding generals, but also the Executive and his Minister of War, renders it necessary to examine them on the ground of facts which really existed, with that freedom and decorum which becomes the citizens of a free country, sensible of the blessings of security and independence, arising from the guarantee of their laws and constitution.

The writer feels confident of proving, to an impartial public, that these charges are entirely destitute of foundation; that the manner in which the troops were raised and officered was neither without orders, nor contrary to orders; nor in violation of the constitution and laws; but with the express

(*w*) Appendix, No. 5.
(*x*) ib. No. 6.
(*y*) ib. No. 22.
(*z*) ib. No. 5.
(*a*) ib. No. 5, 8,
(*b*) ib. No. 27.
(*c*) ib. No. 26, 27.
(*d*) Mr. Lacock's Rep. S. U. S. p. 3.

approbation of the Executive, through his minister of war. Finally, that the course adopted was the only legal and effectual one in times of emergency, and that the governor, in affording his approbation, must have been actuated by the purest principles of patriotism; by a strict regard to usage in such cases; to the constitution and laws.

Although the author is without any opportunity of communicating with general Gaines, so as to enable him to see the orders under which he acted, enough is to be discovered from the voluminous documents already published, to convince any reasonable mind that the accusation against him, relative to the employment of the friendly Creeks in the military service of the United States, is unfounded, and that it was done with the knowledge and approbation of the War Department. There can be no doubt but that he had express orders, which can be found upon an examination of the archives of that office.

At the time at which the appeal was made to the citizens of West Tennessee, the frontier settlements were encompassed by every danger and distress,(*e*) as well as our troops on the Appalachicola. Major Muhlenburgh, with his regular force, had been endeavoring to ascend that river with provisions, &c. and was at last arrested in his progress and surrounded by 800 or 1200 Indians.(*f*) In the letter, with its enclosure, of colonel Arbuckle, commandant at Fort Scott, is described their distress for supplies. He likewise states, that major Muhlenburgh had been attacked from both sides of the river, two of his men killed, and the balance stopped on their route, "as it is impossible," says the Major, "for us to carry out a warp, as a man cannot shew himself above the bulwark without being fired on."(*g*) Colonel Arbuckle then proceeds to state, that "the present war with these Indians *will require a much greater force than was contemplated* to bring it to a favorable conclusion."

All this information was transmitted to the Department of War; (*h*) particularly the account of the massacre of Lieut. Scott and his detachment, in violation of every principle of humanity, and derogatory to those rights which the United States should preserve inviolate, in her relations with every portion of the globe. *The very same day* on which the Presi-

(*e*) Appendix, No 19, 20, 21.
(*f*) President's Message, 2d December, 1818, p. 14. Colonel Arbuckle to General Gaines, 20th Dec. 1817.
(*g*) Appendix, No. 19.
(*h*) Pres. Message, 2d Dec. 1818, from p. 7 to 19.

dent received this afflicting intelligence, (*i*) he issued his order to General Jackson to take command of the Southern Division, and to put a speedy and effectual termination to a state of hostilities so distressing, unprovoked, and expensive to the United States. He authorized the commanding General, who was near the seat of war, to adopt all lawful measures which he might deem *necessary* to secure an *honorable* and *permanent* peace."(*k*)

In a letter of General Gaines to the Secretary of War, he observes, *that the steps he had taken to defend the frontier were known to that Department.*(*l*) Mr. Mitchell, in his affidavit, (*m*) says, that, as early as July, 1817, the friendly Indians tendered their services to the general government, and that "*all these proceedings were communicated to the War Department from time to time;*" and immediately after the 9th of January, 1818, all that made a tender of their services were enrolled and mustered by Col. Brearly, a regular officer of the United States' army.

From an examination of the documents, it must be readily perceived, that a desire existed to procure the aid of these Indians as early as the 2d December, 1817. (*n*) The war had assumed a *serious aspect*, in consequence of the defeat of Lieut. Scott's detachment. Aid was required from every quarter, in order to save the lives of our troops, as well as those of our citizens on the frontier. Under such circumstances, there was no time for delay. Besides, the government, in all previous wars, had sanctioned the practice of employing friendly Indians, upon the most evident and correct principles. Such a measure is calculated to prevent their uniting with our enemies, the hostile Indians; which would almost certainly be the case, owing to their desire and impatience for war. By thus employing them, it also tends to ameliorate their condition, increasing and confirming their attachment to the whites, and to the mild and christian usages of civilized warfare. Upon these principles, but particularly owing to the promptitude with which they can be raised, as well as their efficiency in a woodland and wilderness country, were the friendly Indians employed on the present occasion, as well as on our Northern and Southern borders, during the last British war, with the approbation of every branch of the government.

(*i*) Mr. Tallmadge's speech, p. 11.
(*k*) Appendix, No. 1, 2, 3, Mr. Cobb's resolution in Congress, April, 1818, and the President's Mess. on which it was bottomed.
(*l*) Pres. Mess. 2d Dec. 1818. p. 7, 12.
(*m*) Mr. Lacock's Report, S. U. S. p. 36, 37.
(*n*) Pres. Message, 2d Dec. 1818, p. 8, also p. 14, 20th Dec. 1817.

How General Gaines could have mustered those Indians into the service of the United States without orders, it is difficult to conceive, when Mr. Mitchell tells us, that the government was acquainted with the whole proceedings. General Gaines makes a similar statement, and there is no doubt but that the Indians were ordered to be paid, and were actually paid, under the direction of the War Department—furnishing evidence conclusive, of itself, that General Gaines acted in conformity with the orders of the Executive.

Whether General Gaines appointed the Indian officers, or not, is unknown to the author; but he entertains a confident belief, that he did not, as the Indians have invariably reserved the exercise of that privilege to themselves. General Gaines did not, I am satisfied, attempt to innovate upon their favorite custom—for the best of all possible reasons, that the Indians were infinitely better acquainted with the qualifications of those in whom they could repose confidence, than he possibly could have been.

It is a fact, well known, that *M'Intosh* had a Brigadier General's commission from the General Government, and it is to be presumed that General Gaines manifested no disposition to oppose its authority. General Jackson was vested with a similar power to employ the Cherokees in our service,(*o*) which fully illustrates the policy of the United States in cases of this description. General Gaines is known to be a correct military man, and it cannot be believed, from the evidence to which we have adverted, and which is before the world, that he acted without orders from his superiors.

I shall now return to the accusation against General Jackson.

In the letter which he addressed to the Governor of Tennessee, at Knoxville, *the same day on which he received his orders from the War Department*,(*p*) soliciting his approbation of the measure that was adopted for raising the 1000 volunteers, he stated, that if they could not be obtained, he should be compelled to call on him for a like number of drafted militia. In conformity with his usual accuracy and promptitude in military affairs, on the two next days after the receipt of those orders, and after making his appeal,(*q*) he writes to the Secretary of War, stating the nature of the steps he had taken; and that the result of his appeal to the patriotism of West Tennessee would be known by the 19th of the month.(*r*)

(*o*) Appendix, No. 33. (*p*) Appendix, No. 5. (*q*) Appendix, No. 6.
(*r*) Ib. 4, 7.

In this appeal, or circular, to the officers who had served with him in the late war, General Jackson tells them, that "*the grade of the officers to be determined by themselves, or the platoon officers of the regiment, and the officers raising companies, to command them.*"(*s*) These brave men met at Nashville on the 19th, pursuant to the invitation, when General Jackson was present, and was requested to appoint the officers. He promptly refused, and replied—"*agree among yourselves as to your officers.*" He stated, that he would appoint Col. A. P. Hayne to lead them on to Fort Scott, where he would himself take the command. The officers composing the meeting then agreed that Col. R. H. Dyer should command the first, and Colonel T. Williamson the second regiment. It was also proposed, by the meeting, "that the men should be officered as organized in 1814, when they marched to Mobile, Pensacola, and New Orleans." The other field officers were then agreed on by the meeting, and reported to General Jackson. He stated to them the number of officers on the peace establishment, "and how the regiments were officered under that law." It was replied by the meeting, "that, by experience," they "had found that horsemen required more officers than footmen, on account of horsemen covering a much larger space." The answer of Gen. Jackson on this occasion, was, "*organize yourselves in a way that you may think proper; it will rest with the Government.*"(*t*) This information is detailed in the certificate of Colonels Dyer and Williamson, two gentlemen of high standing in society, for bravery and patriotism, and who had served in that rank during the Creek war, at Mobile, Pensacola, and New Orleans.

Colonel Hayne, Inspector General of the Southern Division of the regular army, was appointed by General Jackson to inspect, muster, and lead those troops from Fayetteville, the place of rendezvous, to Fort Scott, without any specific directions.(*u*) Colonels Dyer and Williamson, after being appointed by the meeting of officers, were addressed by General Jackson on the same day,(*v*) when he directed them to march their "*Volunteer Regiment of Mounted Gunmen*(*w*) to Fayetteville; to be there on the 31st instant, completely armed and equipped, to march for Fort Scott, in Georgia, for a six months' tour."

General Jackson's health was at this time greatly impaired, and he was only afforded a few days to arrange his affairs for the campaign. From this moment, he had nothing

(*s*) Appendix, No. 6.
(*t*) Appendix, No. 23. (*u*) Ib. No. 10. (*v*) Ib. No. 37. (*w*) Ib. No. 36.

further to say or do, in relation to the Volunteers, until he took the command of them in Florida. Colonel Hayne met them, agreeably to order, at Fayetteville, the place of rendezvous, where they appointed their subaltern officers, and from whence he led them to the seat of war. All his communications on this subject, to General Jackson, the Secretary of War, the Adjutant and Inspector General, and from those officers to him, are to be found in the Appendix, in numbers, from 10 to 16, inclusive.(*x*)

The organization of the Volunteers at Fayetteville was conducted in the same manner as they repeatedly had been, during the last Creek and British war, and upon which they again insisted. With General Jackson, or the Inspector General of the Southern Division, there was then no choice or alternative. They were to be received, officered, and organized, upon those principles to which they were accustomed, or the Government might not have been enabled to secure their services at all. As Colonel Hayne, however, remarks, there was great propriety in this organization, as horsemen, like cavalry, must have a greater number of officers to command them.

Thus it appears, that the meeting at Nashville appointed the *field officers* of the two regiments, which was afterwards acquiesced in and confirmed at the rendezvous at Fayetteville; that Colonel Hayne, and not General Jackson, superintended the organization of the captains, subalterns, &c. and that in no part of the transaction did General Jackson or Colonel Hayne *appoint a single officer*, as stated by a majority of the Senate's committee, when they assert, "officers were appointed to command this corps by the General himself, or by other persons acting under his authority."(*y*)

On the day after the meeting of the Volunteer officers at Nashville, General Jackson writes to the Secretary of War; which, together with his letters of the 12th and 13th of the same month, furnished minute information as to the manner in which this corps was raised.(*z*) In his answers to these communications, the Secretary of War approved of the course which had been pursued;(*a*) in one of which he observes—"I have the honor to acknowledge the receipt of your letter of the 20th ult. and to acquaint you with the entire approbation of the President of *all the measures* which you have adopted to terminate the rupture with the Indians."

(*x*) Appendix, No. 10, 11, 12, 13, 14, 15, 16.
(*y*) Mr. Lacock's Report, S. U. S. p. 3. (*z*) Appendix, Nos. 4, 7, 9.
(*a*) Appendix, No. 17, 18.

After Colonel Hayne had superintended the organization of the Volunteers at Fayetteville, and before they had taken up the line of march, he writes a letter to the Secretary of War,(*b*) in which he observes, that "the Major General had authorised the field officers to raise two regiments; and they brought to camp forty captains, of which I could only receive twenty into service. To merge the lesser fractions into the greater, and thus to amalgamate them into single companies, to cut down captains, to leave out subalterns, and yet to satisfy and secure to us all the men, has been a very difficult task indeed. To effect these objects, I have been obliged, in a number of cases, to give an additional Lieutenant and Cornet to the companies. The Major General, in the first instance, agreed that each regiment should have an additional Lieutenant Colonel and Major.(*c*) In fact, I have been compelled to give that organization that was formerly had in the Creek war. I would barely remark, that, on strict *military principles*, mounted gunmen ought to have an additional number of officers. It is certainly more difficult to command 64 mounted gunmen than 120 foot soldiers. I have served in both capacities, and have found it so. In foreign service, too, it is usual to give cavalry an additional number of officers. In order to reconcile jarring interests; to harmonize the conflicting elements of local partialities, and narrow-minded views, and not to lose sight of the great object of the campaign, there was left but one way to act. *I do not hesitate to say, that one man of our present command is intrinsically worth more to the government than ten drafted militia.*"

Four days after this information was communicated to the Secretary of War, Colonel Hayne transmitted to General Parker, the Adjutant and Inspector General, at the City of Washington, the muster-rolls of these volunteers,(*d*) who have been long since mustered out of service, and paid off by the orders of the General Government.

Were it necessary, additional evidence could be adduced to shew how unjust and unmerited has been the crimination of this officer, as contained in the report of a majority of the Senate's committee.(*e*)

The Secretary of War, in answer to the above communications of Colonel Hayne, states: "I have had the honor to

(*b*) Appendix, No. 13.
(*c*) This point was referred by General Jackson to the Government.—See Appendix, No. 23.
(*d*) Appendix, No. 15.
(*e*) Appendix, No. 24, 25. Capt. Gadsden's and Col. Hayne's depositions.

receive your letter of the 9th, and that of the 15th instant. I have the pleasure of expressing to you my entire approbation of *all the measures* you have adopted to ensure a prompt movement of the patriotic volunteers confided to your command."(*f*)

A majority of the committee say, that they "have in vain *sought* for an excuse for the commanding General."(*g*) They seem to have forgotten, that it is a dictate of law, justice, and humanity, that all men are presumed innocent until the contrary appear by proof. Can it be possible that a majority of the committee were influenced by this benign maxim, and at the same time used due diligence to seek for evidence of justification? There must have been an absence of one or the other. In the proper offices attached to the War Department were to be found the evidences detailed, so far as it was important for the committee to enquire. Colonel Hayne's communication, detailing the number of officers and privates, with the *entire approbation of the Secretary of War*, was on file in that office, to which the committee might have had access every hour of the day; and yet we are told, by a majority of that body, that they sought in vain for an excuse for General Jackson!

It is admitted in the Report,(*h*) that the Secretary of War, in his letter of the 29th January, 1818, approbated the conduct of the commanding general in raising these volunteers; but a majority of the committee say, "it is but justice to the Department to state, that it was not until the officers that had assisted in thus officering and organizing this corps, were examined by the committee, that they were apprized of the illegality of the measure; for there is nothing to be found in general Jackson's letters on this subject to the Secretary of War, of the 12th, 13th, and 20th February, 1818,(*i*) from which it can be fairly inferred that he has appointed a single officer."(*j*)

The Secretary of War was made acquainted with the number and grade of both officers and men, by the letter transmitted to him by colonel Hayne, and by the return which was made by the same officer to the office of the Adjutant and Inspector General. But the fact was, as has already been proved, that general Jackson did not appoint a single one of those officers, of which a majority of the committee so loudly complain, as being an infringement of the constitution and laws. And here it may

(*f*) Appendix, No. 16.
(*g*) Mr. Lacock's report, S. U. S. p. 4.
(*h*) Mr. Lacock's Report, S. U. S. p 5.
(*i*) January, no doubt, was intended, as there are no such letters, in Feb.
(*j*) Mr. Lacock's Report, S. U. S. p 5.

not be improper to enquire how the majority of the committee were drawn into a mistake which should have been avoided by such of its members as had the management and collection of the testimony.

It appears, from the report,(*k*) that Mr. Mitchell, the Indian agent, swore to his deposition on the 23d of February, the day before Mr. Lacock presented the Report, with the accompanying documents, to the Senate. In page 34 of the Report, Mr. Mitchell observes that he was summoned before the committee to give evidence, and, after a *verbal* examination, certain questions were propounded to him, which he quotes verbatim, and that he was required to answer them in writing. The fair presumption is that the witness had his own time, upon retirement, to respond to these interrogatories.

To Mr. Lacock's Report there are six papers annexed, purporting to be the depositions of Mr. Mitchell, Indian agent; John H. Eaton, a member of the Senate, and of the committee; Richard K. Call, an aid of general Jackson; Doctor Bronaugh, assistant surgeon general and physician to the staff; colonel George Gibson, commissary general, and colonel Robert Butler, adjutant general of the Southern Division.

The manner of taking and publishing what are called in the Report the depositions of the four last mentioned persons, deserves the particular consideration of the American people. Doctor Bronaugh's deposition is signed but not sworn to; colonel Butler's, colonel Gibson's, and captain Call's, are neither sworn to nor even signed! The only two that can be denominated depositions by any one, are those of Mitchell and Eaton, to whom regular interrogatories were proposed,(*l*) deliberately answered, and their signatures affixed in legal form. In these two depositions we perceive method, time, and deliberation to respond to them. In the other form, the very reverse of this procedure was adopted:(*m*) for these gentlemen, whose characters are beyond suspicion for honor and integrity, declare on oath that they were questioned by the committee, (*verbally* as the writer understands,) that the answers were taken down by a member of that body, the contents frequently erased or interlined, and that all four of them received a *promise* from him that they should be copied and again submitted to them for correction and signature. They also affirm that this promise was never complied with; and captain Call says he

(*k*) Mr. Lacock's Report, S. U. S. p. 38.

(*l*) Com. Dig. Tit. Parliament, L. 25. Witnesses are to be examined upon written interrogatories before committees.

(*m*) Appendix, No 26, 29, 30, 38.

called on the chairman, Mr. Lacock, for that purpose, who told him it should be done if the deposition were used; "that he remained five or six days in the city afterwards, during which time he heard nothing more from the chairman or his deposition, neither did he know that his statement had been applied to any purpose until his return from Philadelphia to Baltimore."(*n*)

The fact is, that the statements thus taken down in the hand writing of a member of the committee, upon *verbal* questions being proposed, have been published to the world as authentic documents!! No interrogatories were exhibited as in the taking of Mitchell's and Eaton's testimony, which afforded the witnesses time to refresh their memories, and to collect and arrange their thoughts, as to facts, dates, and circumstances. Colonel Gibson, from his advanced age, was afforded an opportunity of exhibiting a character as fair, high, and honorable, as any individual of his rank in any army. The other three witnesses were young gentlemen who belong to the staff of general Jackson. Surely the member of the committee having the management of taking the depositions of these officers could not for a moment have harbored the most distant suspicion of perjury. Their standing and reputation as men of honor in the army forbid such an idea; and even were not this the case, the Executive and general Jackson had been recently acquitted of every charge of consequence, by a very large majority in the House of Representatives, and no opposition was anticipated from the Senate, at that late period. There was therefore no inducement to swerve from the truth, of which it is believed they were as incapable as any individuals in the nation.

Why then, let me ask, were not interrogatories proposed, and time given to these officers to answer, as in the case of the other two witnesses? As their statements had not been taken in this way, which was certainly the regular course, they should at least have been afforded time to examine them respectively, after being copied and corrected in the hand writing of the witnesses, and signed by themselves. Without adopting such a rule as this, the most upright man living would be subject to gross mistakes, and would commit errors; as did Col. Butler in relation to officering the volunteers, and the Governor of Tennessee being at Nashville instead of Knoxville.

Until depositions are examined, corrected, and signed by the witnesses, they cannot be considered as evidence, before

(*n* Appendix, No. 26, 29, 30, 38.

any tribunal.(o) Why these papers should be placed amongst the documents as any kind of testimony, in their present imperfect state, seems almost unaccountable; and in vain has the author of these remarks "sought for an excuse" for the member or members of the Committee who superintended the taking of them, some of whom it is believed were lawyers!

In no point of view can these papers be received as evidence, or entitled to credence. A statement on oath is a matter of solemn concern to the reputation of the person making it, as well as all other individuals whose interests are involved. A full and fair opportunity should therefore be given to a witness whose deposition is taken in writing; to consider the expressions; the meaning of every sentence; and, moreover, that, by such an examination, he may have time to correct, and make a full and complete exposition of facts, which he is obliged to do by the obligation of his oath. In the impartial administration of justice in all judicial tribunals, this is always the case, and, on such occasions, the ignorant and uninformed are even cautioned, and invited to the adoption of this course.

It seems difficult to conceive how the illegality of the statements of Butler, Gibson, Bronaugh, and Call, could have escaped the notice of a majority of the Committee; and yet such appears to have been the fact. It is still more difficult to understand how a majority of that body could think of founding a report of an important fact to the Senate, upon the statement of Colonel Butler, or any other man, before he had examined, corrected, and signed that statement. Had this been allowed, reflection and correction must have produced their desired effects, and a part of Colonel Butler's deposition would have been amended, agreeably to notorious facts in Tennessee, viz: that the Governor was at Knoxville, and that General Jackson did not appoint a single officer of the volunteer corps engaged in the Seminole war.(p)

In relation to enquiries into the official conduct of military officers, by either branch of the National Legislature, it is surely of the highest concern to the liberty of the citizen, that some just, regular, and equitable mode of procedure should

(o) In Hinde's Prac. Eq. p. 323, and 1 Pierre Williams, 414, it is laid down as law, that, "after the witness is fully examined, the depositions are read over to him, and the witness is at liberty to amend or alter any thing, after which he signs them, and then, and not before, the examination is complete and good evidence." And again, "where a witness dies after examination, but before such examination is signed by him, the deposition cannot be made use of."

(p) Appendix, No. 10, 11, 12, 13, 14, 15, 16, 23, 24, 25, 26.

be adopted, and adhered to upon all occasions. Upon an enquiry by the House of Representatives of the United States into the failure of General St. Clair, in the campaign of 1791, this officer, together with General Knox, the Secretary of War, were both allowed seats in that body, and were permitted to summon and examine witnesses.(q) In this case, the Secretary of War was implicated in the censure, and he was therefore allowed, with the commanding General, to be present on the occasion. The result of the enquiry was, that the censure fell upon the Secretary of War.

In the case of General Wilkinson, there were several committees, who proceeded by different rules, as their whim, caprice or judgment might suggest; but that of which Mr. Bacon was chairman, in December, 1810, adopted a practice conformably to judicial enquiries in analogous cases.(r) General Wilkinson had notice to attend the sitting of the committee, in order to confront and cross-examine the witnesses.

It is said that General Jackson communicated to the committee of the Senate his willingness to attend their sittings, for the purpose of furnishing any document in his possession, or any explanations which might be desired. The practice had been adopted in the cases of St. Clair, Wilkinson, &c. and why, let me ask, was it departed from in the case now before us? (s) It would have been much more consistent with the principles of natural justice, and the genius of our government, than an *ex parte* investigation, deeply affecting the reputation of a citizen and meritorious officer, and involving, in many cases, even life itself. In this process, there is no opportunity given for confronting the witnesses face to face; to cross-examine, or produce testimony to exculpate or justify the party accused.

I would desire to be informed, where is the kindly feature of freedom in all this manner of proceeding, which can distinguish it from the despotic course that prevailed in the Star Chamber of England, during the most oppressive periods of its history, or a Spanish *Auto da Fe*, except that of bodily torture, which is inflicted by the latter? Inspired by a love of that liberty which the constitution and laws, either general or local, render sacred, I, for one, most solemnly protest against an *ex parte* procedure in the Senatorial branch of the government, having judicial powers, and involving an opin-

(q) 2d Wilkinson's Memoirs, p. 18.
(r) Wilkinson's Memoirs, p. 23. and Appendix, CXXX.
(s) 5 Com. Dig. Tit. Parliament, E. 14.

ion or charge of the commission of crimes or misdemeanors. If permitted, it must, in time, inevitably lead to the most direful oppression of the best officers and citizens of our country! (*t*) This branch of the government has legislative powers, it is true; but it is equally certain that they have judicial authority, and may be called on to exercise it, either in acquitting, condemning, or punishing, for the very same offences which had been submitted to their enquiry, and which they had previously prejudged!

The American people are yet in their youth; and it is evident we have no settled usage, forming the law and custom of Congress, as in the English Parliament, (*u*) relative to legislative enquiries of this description. Under such circumstances, it is essentially necessary, that a nation of freemen should see that such modes of proceeding are established in their various tribunals, in regard to accusations, as will secure the just and natural rights of the citizen. Until some rule shall be settled by usage, the committees of enquiry in our legislative bodies will have no guide or land marks, and the liberty of every individual must be eminently endangered.

The report of a majority of the committee was not merely a statement of *facts;* and even had that been the case, it was necessary to examine, with care, all the evidence that could be adduced, as well on the negative, as affirmative side of each proposition, so as to arrive at the truth, with all possible certainty. Had this mode been adopted, a member of the committee would have been spared the regret which he experienced, when told of the misstatement of facts contained in the report. (*v*) "A departure from these forms is calculated to inflict a wound on the national character, and tarnish" the fame of those who drafted the report, and superintended the collection of the testimony.

The majority of the committee say that "they would feel themselves wanting in their duty to the Senate, and the nation, if they did not express their decided disapprobation of the conduct of the commanding generals, in the steps they took to raise and organize the force employed on this occasion. There was no law in existence that authorized even the President of the United States to raise or accept the services of volunteers." (*w*)

In this proposition, the majority of the committee appear to have assumed it as a fact, that there never was any other

(*t*) 5 Com. Dig. Tit. Parliament, L. 8. (*u*) 5 Com. Dig. Tit. Parliament.
(*v*) Appendix, No. 28. (*w*) Mr. Lacock's report, S. U. S. p. 3.

mode by which the General Government could avail itself of the services of volunteers, but by the act of Congress, which expired in the year 1815. Nothing can be farther from the truth of the case, as a short enquiry will demonstrate.

The State of Tennessee has laws of its own, providing for the employment of volunteer militia; and it is presumed every state in the Union has legal provisions of a similar character. This arrangement results from the nature of man in civil society: for, so long as volunteers can be procured from the militia force of the country, it is contrary to the order of nature, as well as the feelings and wishes of the community, that the country should be protected by the *compulsive* method of drafting. Of what consequence is it to the United States, how the militia force, required from a state, is officered and brought into the field? As to the appointment of the officers, it is distinctly understood to be a power reserved to the states, and is a matter entirely between the government of a state, and its own citizens. It is not a subject of concern to the general government; and they never will interfere in such cases, unless there is a delinquency, or refusal to comply with the requisition.

If volunteers can be raised, they are greatly to be preferred; because they are the most efficient troops, and most speedily brought into service. It is sufficient, however, if the quota demanded is forthcoming, agreeably to the requisition of the government. The United States require nothing more, and leave the mode of officering, and sending them into the field, to the State Sovereignties and Laws, in conformity with the constitution of the United States. If improper steps are adopted, Tennessee, as well as every other state in the Union, is competent to afford redress for injuries growing out of the violation of her own constitution and laws. It is her peculiar province and duty to do so: and she, no doubt, possesses a sufficient degree of intelligence and independence for the purpose, without the interposition of the General Government.

The President, through his agent, General Jackson, called on the state of Tennessee for 1000 men, with which to prosecute the Seminole war. The case was urgent. Delay was pregnant with defeat and disaster. The Governor was 200 miles from Nashville when the orders arrived. The General immediately beat up for volunteer militia; and instantly wrote to the Governor for his approbation, which, in a few days, was obtained, as a matter of course; because, if successful, it avoided a recourse to the dilatory, perplexing, and com-

pulsive method of drafting. The laws of the General Government had nothing to do in this transaction, as a majority of the committee seem to suppose. The laws of Tennessee afforded the rule, under which the general, and the governor of the state, acted, in bringing those troops into the field; and they strictly conformed with their provisions.

The United States had the services of those volunteers, which was all that could be required of Tennessee; and, it is with an ill grace indeed that the General Government now complain, that they were not raised and organized agreeably to the laws of the state. Each state is entitled to the privilege of administering its own laws, and preserving the rights of its own citizens. If they fail in the accomplishment of these objects, it would then be time enough for the General Government, if solicited, to interpose its authority.

It only then remains to be seen, whether the volunteers who served their country in the Seminole campaign were sent into the field agreeably to the militia laws of Tennessee; if so, the argument is at an end, and General Jackson stands acquitted of the high and weighty charges of having "disregarded the positive orders of the Department of War, the constitution, and laws;" (*x*) as well as the many severe and criminating animadversions founded upon it by a majority of the Senate's committee.

By the law of nature, recognized in every age, and in every society, any part of the militia are authorized to offer, tender, or volunteer their assistance, when the country, of which they are citizens, is in need of their military services, to assert its rights, or repel threatened injuries. This principle is the same with that of self-preservation in an individual; is the gift of God, and paramount to all others. It is frivolous to talk of a statute to authorize such a measure. No book is wanting to illustrate it; it is incorporated with our nature; can be seen, felt, and understood, by all classes of the human race, who have a country and a home.

Tennessee acknowledges this sacred principle, and has provided, that, whoever becomes a volunteer for six months or more, shall have credit for a tour of duty, (*y*) in relation to future calls for military services. Having no standing force, every freeman, of proper age, belongs to the militia, which is divided into infantry and cavalry. (*z*) Regimental and company officers are chosen or elected by all those who bear arms in the regiment or company. (*a*)

(*x*) Mr. Lacock's report, S. U. S. p. 3.
(*y*) Act 1815, ch. 118, sec. 72, 98.
(*z*) Acts 1803, ch. 1, 1815, ch. 118.
(*a*) Act 1815, ch. 118, sec. 91, 92.

The Governor, and, in case of emergency, the commandants of counties, are authorized to call for the services of the militia, reporting to the Governor for his approbation. (*b*)

It is not disputed, but that it was proper for the President, through General Jackson, to call on the Governor for as many militia as were required for the defence of the country.

Nor, can it be contended, that the Governor did not authorize the turning out of the volunteers. (*c*) He is vested with power, by law, to call for any part of the militia he may think proper. (*d*)

Cavalry, or horsemen, when employed in service, shall be "considered, ruled, and regulated, as mounted gunmen." (*e*)

The volunteers having assembled at Fayetteville, on the 31st of January, 1818, and arranged and elected their officers as they thought proper, agreeably to the laws of Tennessee, in which neither General Jackson *(who was not within 75 miles of the place)* nor Colonel Hayne took any part, they marched to Florida, and served their country faithfully, without a complaint or murmur.

During the late war with Great Britain the United States employed the same description of troops on the northern and southern frontiers; whose officers were elected by the soldiery, and who performed with alacrity the most eminent services for their country. The volunteers who served under Governors Shelby and Edwards; Generals Harrison, and Porter, of New-York, were raised and organized upon the same principles, as well as those who achieved the victories of Talledega, Emucfa, the Horse Shoe, and New-Orleans. They were paid out of the public treasury, received the approbation of the government, and the applause of the nation. It could not be otherwise. The militia of the United States is its bulwark and security. To large standing armies the people are justly averse, as dangerous to liberty; and the government can only avail itself effectually of the militia force of the country by volunteers, for short periods of time, who retain their character of militia when in the service of the United States, as perfectly as though they had been drafted.

Drafts should, and always will be avoided, if possible; being a method of obtaining the military services of the citizen, which is often attended with ruinous delay, vexation, disquietude, and a uniform tendency to alienate the affections of the people from the government. Volunteers are a species of force more congenial with the genius of our institutions, and they ought

(*b*) Act 1815, sec. 10, 65.
(*c*) Appendix, No. 27.
(*d*) Act 1815, ch. 118, sec. 65.
(*e*) Appendix, No. 36.

to have, at least, the choice of their own platoon officers. They claim this right, without the exercise of which their services cannot be secured; and to refuse it, would only operate to diminish that ardor, cheerfulness, and patriotism, upon which the American people pre-eminently rely in times of difficulty and danger.

But our surprise at this part of the report to the Senate is far from being lessened, when we recollect it was notorious that the field officers of the Georgia militia, on the Seminole campaign, were actually appointed by the privates themselves, on the west bank of the Oakmulgee, beyond the civil jurisdiction of that state, and without any complaint from the Congress of the United States. Besides, one of the Senators in Congress (Col. Williams) had a complete opportunity of being acquainted with the nature of militia volunteer services: particularly in the state of Tennessee, during the late war between the United States and England.

Colonel Williams is a military man, and served his country during that war, not only as a volunteer, but in the regular army. After the declaration of war, in the year 1812, he raised a regiment of volunteers in East Tennessee. He, or his volunteer soldiery, appointed or elected all the officers of the regiment; and without any order or authority from the state or general government. They rendezvoused in Tennessee; marched through the upper part of South Carolina and Georgia into the Seminole country, to meet and chastise this same horde of savages; who had commenced a predatory and murderous war on the Georgia frontier. Though this volunteer corps was neither authorized, officered, nor commissioned, by the General or State Government, yet the measure was universally approbated, their services accepted, and the men paid by the United States. Colonel Williams, it is probable, appointed his own officers. It is certain, however, that his whole proceedings were without authority, and that he was greatly applauded. So far as General Jackson operated, he was invested with ample powers, and yet, strange to tell, *he* has been severely censured!

It is, however, said, that this horde of savages, negroes, &c. were too inconsiderable in number to justify raising the force which was sent against them. General Gaines estimated the force of the enemy at 2,800,(*f*) and Arbuthnot, in a memorandum on the back of his letter to Mr. Bagot,(*g*) stated the number to be 3,500; a calculation by no means extrav-

(*f*) Mr. Lacock's Report, p. 2. (*g*) Pres. Mess. 28th Dec. 1818, p. 149.

agant, when we recollect that from 800 to 1200 were concentrated at one point, when Lieut. Scott was attacked, on the 30th November, 1817, and that they were daily increasing.(*h*) From the character of the Indians, we know that their whole force was not embodied at that place; and it is certainly one of the most estimable principles in military science, that we should not underrate the strength of our enemy, and always to avoid a conflict, unless success is secured by superiority of numbers. Miserable, indeed, would be the policy of any government that should not order a sufficient number of men into the field to ensure a victory over their enemies, especially in a war with savages, who have no fear from superiority of numbers, unless they are made to feel the force of them.(*i*)

Upon this basis did the Executive and his commanding Generals proceed. The estimate was made upon strong grounds of probability. No complaint had been made in the House of Representatives, or the nation, upon this subject, nor had the contrary been asserted, until the war was terminated; and then only upon the most vague conjecture, which has not the same probability for its support, as that upon which the opposing force of the United States was predicated. The fact was, the decisive and rapid movement of our overwhelming numbers, had the effect of distracting and dispersing the enemy, so that they betook themselves to the woods and swamps, and never had an opportunity of exhibiting their whole force by concentration. The consequence was, that the war was speedily and effectually terminated, and much blood and treasure saved to the nation.

In the 9th page of Mr. Lacock's report, we find the following remarks:—"Spain, before she could become, or made a party to this war, must have merged her neutral character in that of the enemy, and clearly identified herself with the Seminole Indians, and, *by acts of open and undisguised hostility* to General Jackson, have opposed him by *physical*, not *moral*, force."

As a sovereign power, Spain never considered herself a party to this war; nor was it so intended by the Government of the United States. It was commenced in self-defence against the negroes and Indians, upon the broad principles of the law of nature and of nations. Although the Spanish authorities in Florida were identified with our enemies, the sovereignty of Spain was believed to be altogether ideal. In consequence of the acknowledgment of her commandants,

(*h*) Pres. Mess. 28th Dec. 1818, p. 14. Letter from Colonel Arbuckle to General Gaines. (*i*) Ib. p. 12.

that they were unable to maintain their authority, and that the Indian chiefs and British emissaries were proceeding contrary to their wishes, and in violation of their laws, we entered her territory, for the purpose of giving peace and security to our frontiers, and chastising the common enemies of both nations.(*k*)

The Spanish minister, Mr. De Onis, did not presume to dispute the principles of the law of nations as applicable to our operations in Florida, but relied principally on the denial of the facts, in relation to the participation or connivance of the Spanish authorities in that province. Insisting, however, that if it were the case, redress(*l*) should have been sought of the King of Spain.

These officers and fortresses had been too long in the habit of furnishing an asylum for the negroes and Indians, either from connivance or weakness.(*m*) In vain has this enquiry been instituted, if I have not long since established, beyond the reach of question, that they were guilty of many "*open and undisguised acts of hostility*" against us, by aiding, abetting, and encouraging our savage enemies in their barbarous hostilities upon our frontiers. When our army was in the field, it was then too late to retire from the country, where, alone, we met with the principal resistance, and return home without doing any thing effectual, and suffer the Indians and negroes to scalp and tomahawk our citizens, until we could hear from the court of Madrid. We had already, too often, received empty messages from Spain, relative to the numerous spoliations committed on our commerce, &c. Besides, Gen. Jackson's orders prescribed a different course. At one decisive blow, he prostrated both the enemies of Spain and the United States; and, instead of being a subject of complaint, he richly merits the thanks and gratitude of both nations.

The report of Mr. Lacock admits that Spain was guilty of violations which were good causes of war, and yet denies that her *neutral* character was *merged* in, and *identified* with, that

(*k*) See General Jackson's communications with the commandants of St. Marks and Pensacola, and his order to occupy St Augustine.

(*l*) See the Spanish Minister's letter to the Secretary of State, 5th August, 1817.

(*m*) In the President's Message, 28th Dec. 1818, from page 48 to 74, may be seen how greatly the United States suffered, not only from the aid and assistance given the Indians by the Spanish commandants in Florida, but from foreign agents and negroes; and this, too, in many cases, subsequent to the treaty of Fort Jackson. It may also be discovered how earnestly and patiently we remonstrated with the Spanish authorities, as well as with the British government, who disavowed the acts of Col. Nichols.

of the enemy. This is almost as unintelligible as the distinction attempted to be drawn between *physical* and *moral* force. Had the acts of Spain been entirely *insulated* and unconnected, with Indian hostilities, a declaration of war in form would have been the proper course, upon the Spanish government failing to make us reparation, and provided those acts did not constitute *invasion;* which the Executive is bound to repel, by the constitution. But, as the parties were "*associates*, and could not be separated in the transaction, inasmuch as the war was *legal* in its commencement, all the incidental measures *necessary* to its termination followed of course, as entirely proper and justifiable. It was to have been expected, that the luminous exposition of this subject, not only in the House of Representatives, but in the conclusive reasoning of our first Minister of State,(*n*) had not left a loop upon which to hang a doubt.

The majority of the Senate's committee say—"the weakness of the Spanish authorities is urged in justification of this outrage upon our constitution."(*o*) I flatter myself it has been already demonstrated, in the preceding pages, that the constitution was not violated. Nor has it in any instance been asserted by the Executive, through his Secretaries of State, of War, or by his commanding Generals, that the *mere weakness* of Spain was a justification of our operations in Florida, as stated by a majority of the committee. But weakness in a neighboring power is no reason why the United States should compromit or abandon her right of self-defence. Indeed, the law of nations authorises us to adopt every necessary measure to prevent our enemies from taking advantage of that weakness *in time of war*. It even justifies our anticipating them, without a breach of neutrality, or declaration of war. "The duty of this government," says the Secretary of State, "to protect the persons and property of our fellow citizens on the borders of the United States, is imperative; it must be discharged."

As we were not at war with Spain, nor intended to place ourselves in that attitude,(*p*) the unintelligible and new fangled distinction attempted to be drawn between *physical* and *moral* force must fall to the ground with the major part of the proposition. It is to be found in no treatise on national law, and has no reason for its foundation.

(*n*) Letters 23d July and 28th Nov 1817, printed documents.
(*o*) Mr. Lacock's Report, S U S. p. 9
(*p*) Doc. Pres. Mess. 28th Dec 1818, p. *55, 73, 76,* 84.

The next subject which has called forth the censure of a majority of the committee is the order of General Jackson to General Gaines to take possession of St. Augustine. It is contained in his letter of the 7th of August, 1818.(*q*)

A majority of the committee say: "In this projected expedition, it was not thought necessary or expedient to consult the Executive branch of the government." No, it was not necessary; because the previous orders to General Jackson had directed him to put a *speedy* and *effectual* termination to the war. "The confidence," says the Secretary of War, "reposed in your skill and promptitude assures us that peace will be restored on such conditions as will make it *honorable* and *permanent*.(*r*) The letter of Major Twiggs had informed the commanding General, that our Indian enemies "*had been fed and furnished from the garrison of St. Augustine;*" upon which he tells General Gaines, "that it will be necessary to obtain evidence of the fact," before he proceeded to act; and that, should he take possession of that post, he was to hold it until he heard from the President of the United States.

In the same letter to General Gaines, General Jackson proceeds further to remark: "*Let it be remembered that the proceedings carried on by me, or this order, is not on the ground that we are at war with Spain; it is on the ground of self-preservation, bottomed on the broad basis of the law of nature and of nations; and justified by giving peace and security to our frontiers.* Hence the necessity of procuring evidence of the fact of the agents or officers of Spain having *excited the Indians to continue the war against us*, and that they have furnished them with the means of carrying on the war. This evidence obtained, you will (if your force is sufficient) permit nothing to prevent you from reducing Fort Augustine, *except a positive order from the Department of War.*"

It is admitted, by a majority of the committee,(*s*) "that a copy of the order issued by General Jackson to General Gaines, for the reduction of St. Augustine, was transmitted to the Secretary of War, and a countermanding order promptly despatched to General Gaines, which reached him before the military expedition set on foot by General Jackson had commenced; and thus was suddenly arrested a military scheme, as *unconstitutional* as it was impolitic."

In the letter of the Secretary of War to General Gaines, dated 1st September, 1818,(*t*) the order of General Jackson to

(*q*) Mr. Lacock's Report, S. U. S. p. 10 and 19.
(*r*) Appendix, No. 1, 2, 3, 17. (*s*) Mr. Lacock's Report, S. U. S. p. 11.
(*t*) Mr. Lacock's Report, S. U. S. p. 23.

occupy St. Augustine was countermanded, except so far as related to the collection of evidence shewing the participation of the Spanish authorities with the Indians, in continuing and carrying on the war against us. The Secretary remarks: "It is to be presumed that his orders in relation to St. Augustine were given before General Jackson was apprised of the decision of the President, in relation to St. Marks and Pensacola; as the principle on which that decision was made would equally extend to the case of St. Augustine.

It was impossible that General Jackson could have been acquainted with the course adopted by the President relative to the restoration of St. Marks and Pensacola, at the time of issuing his order to General Gaines, on the 7th of August, 1818. The President and his cabinet did not form their determination until the 12th of that month, as may be seen by a letter from the War Department;(*u*) whereas General Jackson had issued his order at Nashville, to General Gaines, five days anterior to that date.

Under the circumstances, then, in which General Jackson was placed, was it correct, and was it required by his duty, that he should have issued the order of the 7th August to General Gaines?

General Jackson did not set on foot his military expedition against St. Augustine without authority, as stated by a majority of the committee. It was done agreeably to his orders, as he had been directed to enter Florida; to put an *effectual* termination to the war, and secure an *honorable* and *permanent* peace. It was impossible to effect these desirable and necessary purposes, so long as the Spanish authorities gave culpable countenance, encouragement, and assistance, to our enemies, and their imbecility was permitted to cover Indian perfidy and murders. The commanding General had previously hoped (and very rationally too) that the war was at an end, after the reduction of St. Marks, which ought to have been sufficient to convince both the Spaniards and Indians that Spanish garrisons were not to protect them from merited chastisement. This just and humane expectation however was not realized, as he found himself disappointed, not only in the conduct of the fortress of Pensacola, but also in that of St. Augustine. Subsequent events also shew the correctness of the information received by General Jackson, previous to his order of the 7th of August, 1818.(*v*)

(*u*) Secretary of War to General Jackson, Doc. 2d Dec. 1818, p. 41.

(*v*) Mr. Lacock's Report, S. U. S. See Major Fanning's letter to General Gaines, in which he says—"I learn that the Seminoles have received from St.

Governor Bibb, in his communication to General Jackson of the 19th of May, 1818,(w) whilst stating the outrages and murders which were daily perpetrated on the frontier of Alabama, as also the aid and comfort which the Indians received from the Spanish authorities, observes: "Had I been furnished with funds, the enemy would have been driven from that retreat long before this time; *persuaded, as I am, that it is the only effectual method of affording security to this territory.*" Of the same persuasion must have been the Executive of the United States, or he would not have given General Jackson orders to enter Florida in pursuit of those Indians, and invested him with discretionary powers to adopt all such measures as he might deem necessary for the establishment of an *honorable* and *permanent* peace.

General Jackson's character for decision and promptitude might well assure the government that peace would be restored on those conditions. To leave the Indians only dispersed, when they could assemble in safety, be recruited and invigorated by supplies and munitions of war in Spanish fortresses, and thence break out afresh upon our exposed frontiers, with the tomahawk and scalping knife, would have greatly aggravated our distresses of every description. Although they had disappeared before our victorious and pursuing army, they would have followed closely upon its heels whilst retiring from their country, plundering and murdering our citizens by the time it could possibly have crossed the line.

It was not in the nature, character, nor intelligence of General Jackson, to suffer such a state of things to exist, under the orders he had received, bottomed, as they were, on the interest, honor, humanity, and justice of the American government. That distinguished officer never performs his duty by halves; nor do his military operations evaporate in parade,

Augustine *ten pack horse loads of ammunition*, and that it was distributed among them"—and that "the Spaniards recommended to the enemy *united and vigorous operations against us.*" See also General Gaines's letter to Governor Coppinger, in which he states—"I have received information that Augustus Santee, a Sergeant of the United States' artillery, who had obtained from his commanding officer a temporary leave of absence, was a few days since *fired on, arrested, and imprisoned*, by a party of armed men at St. John's, headed by a person assuming the rank and character of a Spanish officer.

"It is likewise reported, that two citizens of the United States were, by the same party, *fired on, wounded, and imprisoned;* and that the perpetrators of this outrage, with a view to shelter their conduct under the veil of Spanish authority, took the sergeant and citizens by force, towards *St. Augustine*, whither it was understood they were to be carried, under a pretext, that they would there be arraigned and tried as offenders."

(w) Mr. Lacock's Report, S. U. S. p. 25.

when he is expected by his government to accomplish an object. Some persons there probably are, who, in the estimate of this General's character, associate ideas of rashness and immoderation. In no instance, however, of his long public career, have his official transactions evinced such a disposition. He attentively views an object on every side, as well as the accessible means necessary to its effectuation. Though bold and daring in his plans, he has seldom failed in the adequacy of the means which were provided for their accomplishment. In doing so, it must be admitted by all that great reliance was placed in the superior intelligence of his own mind, as well as the resources and energies of his character. Seeing his object with distinctness, the means are as promptly weighed and considered, and he then presses forward to its attainment, inspiring all around him with an ardor, cheerfulness, and disregard of danger and of death, rarely to be equalled in any age or any country.

Such seems to be an imperfect outline of the character of this personage, who has obtained so much celebrity in the military history of our country. When the government gave orders to such an officer to terminate the war, so as to secure an *honorable* and *permanent* peace, it could not have been expected that he would leave St. Augustine in the possession of the Spaniards, upon ascertaining the facts that it was an asylum for our enemies, where they received aid and comfort, provisions, and munitions of war, and where they were encouraged "*to a united and vigorous exertion in their operations*" against the citizens of the United States!

It will be readily observed that the order directed to General Gaines to occupy this fortress, was entirely *conditional* and *prospective*. Before the order was issued, it was rendered highly probable that our flying and savage enemies were embodying at that place, and were aided, abetted, and encouraged by the commandant. There was a very strong presumption that this, like the other Spanish posts, had become an Indian depot, covered by the Spanish flag, to which the savages retreated for shelter and protection, after being driven, alternately, from the Negro Fort, St. Marks, and Pensacola. Had these facts been identified, as directed, there would have existed the same incontrovertible reasons for taking possession of St. Augustine as the two last mentioned fortresses. The orders to the commanding General remained the same,(*x*) no change having taken place, or counter order directed to him, by the government. Besides, he transmitted

(*x*) Appendix, No. 1, 2, 3, 17, 18.

to the Secretary of War regular accounts(*y*) of his proceedings in Florida, with the reasons and motives by which they were dictated and justified, from the 25th of March to the 7th of August, when his order to General Gaines was issued, and that, *too*, without a sentence of dissatisfaction ever having been expressed by the government.

It was not until the 14th of August, that orders were issued to Generals Jackson and Gaines to restore Pensacola absolutely, and St. Marks conditionally. Fort Gadsden, situated within the limits of the Spanish territory, was to be retained by the American troops. General Jackson may be presumed to have received this order about the first of September. It was the first intimation which reached him relative to the decision of the Cabinet, and which rendered it absolutely necessary that he should forbear the prosecution of any further defensive measures against the Spanish posts.

This change in the military operations of the government proceeded, in all probability, from policy, or prudential considerations; not that General Jackson, in the exercise of the discretion vested in him, had violated any law, either constitutional, national, or municipal. A negociation with Spain was, at that time, on foot; and it is probable that the President deemed it proper to remove all doubt, and convince the government of Spain that our measures were entirely *defensive* and *pacific*, by ordering a restoration of two out of the three fortresses which were then in our possession. As a military officer, General Jackson had nothing to do with the *policy* of the Cabinet. His duty consisted in a strict obedience to his orders. These, it is believed, he uniformly observed, where they were limited in their character; and upon those occasions where he was vested with discretion, no one can doubt that he exercised it so as to promote the honor, peace, and ultimate good of his country, and in strict conformity with the constitution, laws, and usages of nations.

The majority of the committee further remark: "long before this period, the commanding General had, by his letter to the Secretary of War,(*z*) declared the Seminole war at an end; and *after which not a single new act of hostility had been committed.* Yet, *in this state of peace*, is a military officer directed to ascertain facts, and, on such facts being substantiated, to make war on the neutral colony of a nation in peace and amity with the United States."(*a*)

As has been already observed, General Jackson persuaded

(*y*) Pres. Mess. 2d Dec. 1818, p. 48, 50, 51, 56, 57, 58, 59, 87, 88, 89.
(*z*) 26th April, 1817, Mr. Lacock's Report, S. U. S. p. 6. (*a*) Ib. p. 10.

himself that the war was terminated, after the asylum of St. Marks had been cut off from the Negroes and Indians. In this calculation, further experience proved that he was greatly mistaken. Indeed, we are not confident, to a *certainty*, that the war is yet over, as no treaty has been made; and even were this the case, like that of Fort Jackson, in 1814, no actual peace might be realized, so long as the Negroes and Indians found supplies, protection, and encouragement, in East and West Florida. Facts prove this to have been a correct view of the subject, and that a majority of the Senate's committee are mistaken, when they state "that not a single new act of hostility had been committed," &c.

Governor Bibb's letter, which was before the committee, presents an entirely different aspect of this question. Besides, it is known, that *six men were murdered in the interim:* a communication of which, it is believed, was made to the War Department by General Gaines, and may be found upon examining the documents on file in that office. Charles Baron's deposition, with the official communication of General Jackson to the Secretary of War, under date of the 5th February, 1819, also demonstrate that the majority of the committee greatly erred in making this statement.(*b*) If further evidence were wanting, the committee have furnished it themselves, in the communications of General Gaines and Major Fanning, annexed to their report, in pages 45 to 48.

It may not be improper, in this place, to remark, that many of the numerous facts stated in this report have reference to an immense mass of documents which have been published to the world in detached form and apparent confusion, and that it might therefore be inferred that mistakes would occur; *but, in relation to facts stated in the Report, and opposed by the documents annexed,* much more difficulty is experienced in accounting for inaccuracy.

Suppose, however, that, between the 26th of April and 7th of August, 1818, none of the citizens of the United States had been annoyed, robbed, or murdered, by the Indians resident in Florida; still there would have been no ground for the high charge against General Jackson, "that he had disregarded not only the Legislative and Executive authorities of the United States, but setting at nought the usages of all civilized nations, by making war without a previous and public declaration."

It is stated in Mr. Lacock's Report,(*c*) that "the tendency

(*b*) Appendix, No. 39, 40.
(*c*) Page 7.

of these measures by the commanding general seems to have been to involve the nation in a war without her consent, and for reasons of his own, unconnected with his military functions;" and that "they would be unwilling to attribute improper motives where those of a different character could be possibly inferred."

I flatter myself that the reader has been long since completely satisfied that this war, with all the measures adopted for its prosecution, was not only sanctioned by the Executive, who is charged with the defence of the nation, but also by Congress themselves; and that there is consequently no foundation for such an imputation as is here levelled against the commanding general. I have shewn, too, in the most conclusive manner, from the communications of general Jackson with the commandant of St. Marks, the governor of Pensacola, Secretary of State, and the order to occupy St. Augustine, that he did not consider those measures of an hostile character, in relation to the government of Spain. They did not constitute war, and the commanding general had no other agency in them than strictly to obey the orders of the Executive of the United States.

If, in our enquiries relative to the manner in which this war was prosecuted, it sufficiently appears that the acts performed by the commanding general were in conformity to law and the orders by which he was governed, further investigation as to the motives of action might be superceded; believing it to be a sound maxim of law as well as morals, that when the act is *lawful*, no human tribunal can institute an enquiry into the motive. The God of Heaven alone, the searcher of all hearts, has cognizance of this matter. Before all human tribunals, the act must first be proved *unlawful*, and not till then can the motive be examined, in order to aggravate or mitigate the offence.

After the very able discussion which had taken place in the House of Representatives of the United States, resulting in a decision, by an overwhelming majority, that the motives and measures of this officer were justifiable and could not be impeached; it might at least have been presumed, by a majority of the committee, that they were pure and correct. It is extremely difficult to ascertain why and wherefore his motives were referred to at all. Wretched indeed would that people be, whose motives of action, however innocent, praiseworthy, or legal, might be made a subject of judicial enquiry! It would be productive of endless uncertainty and oppression. It is amply sufficient, for all earthly purposes, if our actions

are quadrated by law; and when that is the case, no tribunal can exist in any age or country to take cognizance of our motives. In political or judicial enquiries into the conduct of individuals, purity of motive necessarily follows purity of action.

The majority of the committee say, that they were constrained to attribute improper motives to the commanding general, as those of a different character could not possibly be inferred. In vain, then, have I endeavored to demonstrate that the conduct of the Executive and his commanding generals has been legal and proper, in relation to their military operations in the Floridas. In vain have they received the unqualified approbation of the nation, as well as of a large majority of the immediate representatives of the people in the House of Representatives of the United States, whose views upon the subject of the Seminole war I have only attempted to arrange and condense in these pages.

Upon the subject of general Jackson's motives, a majority of the committee have certainly exhibited an unusual share of asperity, as well as a want of charity, which was not to have been anticipated from those who were members of so august and enlightened a body as the Senate. In a statement of many facts contained in their report, they seemed to have recognized but imperfectly the existence of the maxim founded in the humane principles of liberty and the christian religion, that innocence is always presumed until guilt is established by satisfactory proof.

Had a majority of the committee examined the communications of the commanding general to the Secretary of War,(*d*) upon the subject of his military operations, as well as the order to take possession of St. Augustine,(*e*) they would have been enabled to satisfy themselves, that the motives by which he was actuated were to obey his orders in giving peace and security to our bleeding frontier; to carry on a vigorous and efficient war against our enemies, with an overwhelming force, by which the national treasure would be economised, and the lives of our citizens preserved.

What motive, distinct from his military functions, let me ask, could have operated upon the commanding general, in his operations in Florida? By acquiring the possession of the Spanish posts he neither added to his power nor wealth; but, by his detention in a low and wet country, and surrounded with

(*d*) President's Message, 2d December, 1818. p. 50, 56, 86. Mr. Lacock's Report, p. 15.

(*e*) Mr. Lacock's Rep. S. U. S. p. 19.

every embarrassment and privation, he greatly impaired the small remnant of a shattered and feeble constitution. All who are acquainted with general Jackson, and the weak and precarious state of his health, are perfectly satisfied that nothing but an urgent sense of duty carried him to Florida, when his constitution was so much enfeebled as to produce a continued desire to return to the interior.(*f*) And when in that country, it is believed, that nothing but the same imperious sense of obligation, in carrying into effect the orders of the government, and a regard for the permanent peace and happiness of his fellow citizens, induced him to garrison the Spanish fortresses.

His orders were to enter Florida in the prosecution of the war, and to bring it to a *speedy*, *honorable*, and *permanent* conclusion. The commanding general was convinced that the objects of the war would fail altogether, unless the strong holds of the enemy were wrested from them, as well as those sources from whence they derived all their supplies and munitions of war. Sheltered by Spanish garrisons, and receiving aid, encouragement, and comfort from their commandants; upon our troops retiring from the country they would have reappeared, "and fired, in addition to their ordinary ferocity, with revenge for the chastisement they had recently received, would again have rushed with the war hatchet and scalping-knife into the borders of the United States, and marked every footstep with the blood of her defenceless citizens." To prevent the recurrence of these calamities were motives amply sufficient and clearly indicated, as well as entirely accessible to a majority of the committee, had they given themselves the trouble to advert to these orders.

But it is the misfortune of this Report to be opposed by the evidence of its own documents in another instance! The depositions of colonel Butler and John H. Eaton, annexed to the Report, conclusively prove that general Jackson had no agency in speculating in Florida lands, respecting which many questions had been asked on the part of the committee. It is understood that no other evidence was attempted to be introduced for the purpose of developing the "reasons of his own, unconnected with his military functions;" and this is in direct opposition to the inference drawn by a majority of the committee.

The former services of the President and his commanding generals should also have exempted them from censure and their motives from impeachment. These alone ought to have prevented the majority of the committee from having *sought*

(*f*) Pres. Mess. 28th Dec. 1818, p. 180, 182, 188.

in vain for an excuse, and from attributing "improper motives where those of a different character could be possibly inferred."

With respect to Mr. MONROE, it may be said that his political career has been distinguished by the most happy auspices. Having assiduously labored in the public service for about forty years, he has uniformly discharged his duty with fidelity and integrity, as well as with an ardor and devotion in the cause of his country which can alone identify the genuine patriot.

At a very early period of our history, Mr. Monroe gave unequivocal evidence of his foresight as a statesman, and manifested a particular solicitude for the interests of the western people. When Mr. *Gardoqui*, the Spanish minister, was intriguing with our government for the purpose of inducing them to cede away the navigation of the Mississippi for *twenty-five years*, he was a member of Congress from the state of Virginia, and zealously opposed the adoption of the measure. Since that period he has served the people in the character of Governor, Representative to the State and National Legislatures; as Minister to several of the principal Courts of Europe, and now fills the exalted and responsible station of President of the most distinguished Republic on the globe. In all those capacities it is believed that he has acquitted himself with more than ordinary ability, and to the entire satisfaction of his enlightened countrymen.

Since he was elevated to the Presidential chair, the political sea has been quite calm and unruffled. The old wall of partition between the two great parties of our country being almost entirely broken down, he has used his earnest efforts to allay political animosity and sectional prejudice, by substituting a spirit of union and conciliation. In this attempt, he has been successful beyond the most sanguine expectation. The consequence has been, that we are made to enjoy all the blessings arising from an identity of interest and feeling, and the talents of the nation are consolidated for the effectuation of national purposes.

In consequence of our being at peace with the whole world, and the subsidence of party spirit, the administration of Mr. Monroe may be said to constitute a *golden age* in American politics. Besides, he has acquired more national wealth, and given greater extension to the territorial limits of his country, than any of his predecessors, except Mr. Jefferson. There is scarcely a point within the compass of this vast republic, at which he has not extinguished the Indian title to the most valuable tracts of land, with but a small expenditure of blood and

treasure. By means of these acquisitions the sources of foreign hostility have been diminished; thousands of emigrants are supplied with lands on moderate terms; the poor are provided with a home and abundance, and millions are brought into the public treasury. Furthermore, the old states are enabled to send out their swarms of surplus population; wealth and happiness are more generally diffused; greater strength and durability given to the union and all our republican institutions. The numerous testimonials of regard which Mr. Monroe has received, in the course of his tour through different parts of the United States, are a satisfactory earnest that those services are not forgotten, but that he is held in grateful recollection by a free and republican people.

General Gaines has already been noticed in this enquiry, as an officer who was educated to the profession of arms from his youth, and who had acquired more than ordinary celebrity for his patriotism and military services. He is also known as one of the ablest disciplinarians in our army, and for a rigid observance of the orders of his superiors. During the late war with England, he displayed a skill and gallantry which marked him as an officer of distinction, and obtained for him an evergreen fame. The hero of Fort Erie will be honorably remembered, as long as valor and military prowess shall command the respect of the freemen of our country. On the Southern frontier, his operations were distinguished, principally, by the unexampled sufferings and privations to which he was subjected. On all occasions, however, he is acknowledged to have acted with a firmness, decision, and alacrity, which characterises the soldier, and sincere friend to the welfare of his country.

In relation to the services of General Jackson, they are reduced to no ledgered account, and have almost exhausted panegyric. As a general and negotiator, he has rendered services in acquiring national wealth, and extending the territorial limits of the United States, which never can be forgotten. They are incorporated with the history of the country, and must live in our grateful remembrance, as long as patriotism receives a tribute of admiration, or merit is assigned its appropriate meed. He has, on all occasions, displayed a resolution, enterprize, and patriotism, which has been rarely equalled, and his military operations have been crowned with a success unparalleled either in ancient or modern times. With an emaciated frame and feeble constitution, he has encountered every danger, hardship, and privation, and merits the most precious boon in the gift of his country. His victories have been more

brilliant than those of Ramilies and Blenheim, and have encircled his brow with imperishable laurels. They constitude the proudest monuments of this nation's glory, which should be carefully cherished, both by the government and its citizens. It is one of the richest treasures of the American people, and is the foundation of their peace at home and respectability abroad.

During the late war with England, when gloom and disaster hung over the fortunes of our country; when the heart of the patriot and the spirit of the nation were sunk in despondency: the government paralized by accumulated defeat and misfortune, and our treasury entirely exhausted, every eye was fixed upon this distinguished hero. The most awful forebodings and anticipations were entertained as to the fate of New-Orleans, which, it was feared was about to fall into the hands of the enemy, and be visited with rapine and violence. What sincere and heartfelt joy was manifested upon the arrival of the news of that unparalleled victory! One universal burst of exultation was heard throughout the Union. The emporium of western commerce was preserved from fire and pillage, and "*beauty*" protected from ruffian pollution. Congress adjourned, unable to proceed to business, and bonfires and illuminations proclaimed the grandeur and magnificence of the achievement. The tongue of defamation was dumb, and party feelings were hushed to repose. Every heart bounded with gladness, and the proud trophies of the 8th of January united the honest men of all political creeds, in an expression of national triumph and gratitude.

General Jackson is destitute of ambition, save that of advancing the welfare and happiness of his country. If the sacrifices and sufferings which he has cheerfully encountered are the fruits of such a passion, it then may be considered of Godlike origin, and should call forth the admiration of every individual of the nation. To him power has no allurements and office no charms. Long has he sighed for the hour of retirement to private life, where he can enjoy the society of his family and friends. He has devoted his best services to the cause of his country. Her constitution and laws are objects of his sincere veneration, and every solicitude of his heart is engaged for the perpetuation of her liberties. His health is rapidly declining under the pressure of age and disease, and all he asks of his beloved country, on this side of the grave, is to measure out to his motives and character an ordinary share of charity and justice.

Such characters as these are the best friends of the country, and its most efficient supporters in times of difficulty and danger. Their fame constitutes part of the moral capital of a free people, and contributes to give us an exalted distinction amongst the nations of the earth. Let us not, by unmerited censure, sully the chastity of their well earned renown. We shall thus confirm the imputation against republics, of ingratitude to their greatest benefactors. This is a sin of the deepest dye in the character of a nation, and will prevent individuals of abilities engaging in our service, at times that call for the exertion of all the skill and resources of the country. It will tend to discountenance merit and enterprize, and palsy the arm of our government in all its operations.

The consequences resulting from the services of the President, and his commanding Generals, are the establishment of an honorable and permanent peace, and repose and security to our frontier settlements. By cutting off all intercourse between the Southern Indians and European nations, we shall have no more foreign incendiaries to stimulate them to wars of extermination; no more prophets to instil their superstitious poison into the minds of their brethren, and to crimson our frontier with the blood of every age, sex, and condition. "We shall hear no more of murders and robberies within our borders, by savages prowling along the Spanish and British lines, and seeking shelter and protection within them, to display in their villages the scalps of our men, women, and children; no more of their selling, with shameful effrontery, the plunder of our citizens in Spanish forts and cities; no more apologies from Spanish Governors and Commandants, of their inability to perform the duties of their office, and the solemn contracts of their country; no more excuses for compliances to the savage enemies of the United States, from the dread of their attack upon themselves, and no more harboring foreign impostors upon compulsion."

Again:—More has been effected by those measures, in adjusting our differences with Spain, than *thirteen* years negotiation. We have obtained by treaty a sovereignty over the Floridas, which gives extension and compactness to our territorial limits. A long line of sea coast has been acquired, upon which there is at least one of the most safe and capacious harbors on the American Continent; and the United States have secured the free and uninterrupted navigation of all the rivers which flow through the newly ceded territory, into the Gulph of Mexico. This country likewise affords the most abundant supply of *live oak*, for the purposes of ship

building; and its possession will enable us to give an effectual check to smuggling in that quarter, as well as the introduction of slaves into the United States, in violation of our constitution and laws. Measures so beneficial in their consequences will have the effect of advancing our welfare for half a century to come. They have received the sanction of Messrs. Jefferson and Madison, as also of the Legislatures of Pennsylvania and Mississippi, and cannot fail to secure the decided approbation of every deliberative body in the nation.

The result of our investigations, then, has been, that the measures of the President and his commanding Generals, in the commencement and termination of the Seminole war, were authorized by precedent, as well as by our constitution and laws: that they were also sanctioned by the acts of Congress, and the immutable principles of international law, in relation to the rights of self preservation. I have also proved that a majority of the Senate's committee have not sustained a *single position* which they assumed; that the testimony upon which they acted was illegally procured; many of their statements without the scope of the authority conferred upon them, and contradicted by the documents which they, themselves, have published as part of their report! These circumstances are calculated to excite public astonishment, when it is recollected that the subject had been satisfactorily developed in the House of Representatives, and that a majority of the committee had consumed several weeks upon the points submitted to their consideration. They must also satisfy every candid mind that the majority of the committee have not "*maturely* and *dispassionately* examined the subject," nor redeemed their pledge "*faithfully* to disclose facts, and *impartially* to draw conclusions."

When the subject is presented in this attitude, it cannot but be believed that the Report to the Senate was drawn in a settled spirit of opposition to the President and his commanding Generals. It must also have been prepared, in so much haste, at the close of the session, for the purpose of counteracting the decision of the House of Representatives, as not to afford sufficient time for an examination of those documents upon which it professes to be founded.

A List of the Documents in the Appendix.

No.		
1.	Secretary of War to General Jackson,	December 26th, 1817.
2.	to Governor Bibb,	May 13th, 1817. Extract.
3.	to General Gaines,	January 16th, 1818. Extract.
4.	General Jackson to Secretary of War,	January 12th, 1818.
5.	to Governor of Tennessee,	January 11th, 1818.
6.	Appeal to Volunteers,	January 11th, 1818.
7.	to Secretary of War,	January 13th, 1818.
8.	to Governor of Tennessee,	January 19th, 1818.
9.	to Secretary of War,	January 20th, 1818.
10.	to Colonel Hayne,	January 21st, 1818.
11.	to same,	January 21st, 1818.
12.	Colonel Hayne to Secretary of War,	January 28th, 1818.
13.	to same,	February 9th, 1818.
14.	to same,	February 13th, 1818.
15.	to Brigadier General Parker,	February 13th, 1818.
16	Secretary of War to Colonel Hayne,	March 7th, 1818.
17	to General Jackson,	January 29th, 1818.
18.	to same,	February 6th, 1818.
19.	Major Muhlenburgh to Colonel Arbuckle,	December 16th, 1817.
20.	Colonel Arbuckle to General Gaines,	December 21st, 1817.
21.	Major Muhlenburgh to Colonel Arbuckle,	December 19th, 1817.
22.	General Jackson to same,	January 20th, 1818.
23.	Certificates of Colonels Dyer and Williamson.	
24.	Deposition of Captain Gadsden.	
25.	of Colonel Hayne.	
26.	of Colonel Butler.	
27.	Gov. of Tennessee to Gen. Jackson, extracts of 2 letters,	April 6th, 1819.
28.	Captain Easter to same,	April 21st, 1819.
29.	Deposition of Captain Call.	
30.	of Doctor Bronaugh.	
31.	Secretary of War to General Jackson,	September 27th, 1815.
32.		October 2d, 1816.
33.		December 30th, 1817.
34.	Deposition of Lieutenant M'Keever.	
35.	Secretary of the Navy to Commodore Patterson,	March 27th, 1818.
36.	Act Legislature of Tennessee, 1815, ch. 118, sect. 112.	
37.	Gen. Jackson to Colonels Dyer and Williamson,	January 19th, 1818.
38.	Deposition of Colonel Gibson.	
39.	of Baron.	
40.	Secretary of War to General Jackson,	February 5th, 1819.
	General Jackson to Secretary of War.	

APPENDIX.

[No. 1.]

DEPARTMENT OF WAR, 26th December, 1817.

SIR: You will repair, with as little delay as practicable, to Fort Scott, and assume the immediate command of the forces, in that quarter, of the Southern Division.

The increasing display of hostile intentions, by the Seminole Indians, may render it necessary to concentrate all the contiguous disposable force of your division upon that quarter. The regular force now there is about eight hundred strong, and one thousand militia of the state of Georgia are called into service. General Gaines estimates the strength of the Indians at twenty-seven hundred. Should you be of opinion that our numbers are too small to beat the enemy, you will call on the executives of the adjacent states for such an additional militia force as you may deem requisite.

General Gaines had been ordered, early in last month, to repair to Amelia Island. It is presumed that he had, therefore, relinquished the command at Fort Scott. Subsequent orders have been issued to the general, (copies of which will be furnished to you) advising him that you would be directed to take command, and directing him to reassume, should he deem the public interest to require it, the command at Fort Scott, until you should arrive there. If, however, the general should have progressed to Florida, before the subsequent orders may have reached him, he was instructed to penetrate to the Seminole towns, through Florida; provided the strength of his command at Amelia would justify his engaging in offensive operations. With this view, you may be prepared to concentrate your force, and to adopt the necessary measures to terminate a conflict which it has ever been the desire of the President, from considerations of humanity, to avoid, but which is now made necessary by their settled hostilities.

I have the honor to be, &c. &c.

[Signed] J. C. CALHOUN.

Major General ANDREW JACKSON, *Nashville, Tennessee.*

[No. 2.]

Extract of a letter from John C. Calhoun, Secretary of War, to Governor Bibb, dated

"DEPARTMENT OF WAR, 13th May, 1818.

"General Jackson is vested with full powers to conduct the war in the manner which he may judge best."

[No. 3.]

Extract of a letter from John C. Calhoun, Secretary of War, to Brevet Major General Edmund P. Gaines, dated

"DEPARTMENT OF WAR, 16th January, 1818.

"SIR: The honor of the United States requires that the war with the Seminoles should be terminated speedily, and with exemplary punishment for hostilities so unprovoked. Orders were issued, soon after my arrival here, directing the war to be carried on within the limits of Florida, should it be necessary to its speedy and effectual termination. The orders, I presume, have been received."

[No. 4.]

Head Quarters, Div. South, Nashville, 12th Jan. 1818.

SIR: I have the honor to acknowledge the receipt of your order of the 26th ult. which reached me last night; its contents are duly noted, and will be promptly attended to.

I have received no late advices from General Gaines, although I have for some time expected the return of the express sent to him on the 24th of November last. Taking into view the strength of the Seminoles and their adherents, as reported to you by General Gaines, and the aggregate of his strength, regulars and militia, amounting to but 1800 men, which cannot possibly afford a like number of effectives; considering, likewise, that the greater portion of his forces are drafted militia from Georgia, who may apply for their discharge at the expiration of three months from the time they were first mustered, and who may be disposed to claim this right and abandon the campaign about the time I could reach Fort Scott, I have deemed it both prudent and advisable to call, from the west end of the state of Tennessee, for one thousand volunteers, mounted gun men, to serve during the campaign. With this force, in conjunction with the regular troops, I can act promptly, and, with the smiles of Heaven, successfully, against any force that can be concentrated by the Seminoles and their auxiliaries. Viewing, however, the lives of our citizens as too precious to be risked in a contest with savages, with the odds of two to one, unless where real necessity demands the exposure, I have therefore written to the governor of Georgia to continue in the field the one thousand men required by General Gaines.

The result of the appeal I have made to the patriotism of those brave men, in West Tennessee, who have so often followed me to the field of danger, will be known by the 19th instant, and I hope to leave this for Fort Scott on the 22d; of

my movements, and success in raising the mounted volunteers, you shall be advised.

It may appear to the government, on the first view, that mounted men are the most expensive; but when we consider the rapidity of their movements; the amount of quarter master's expenditures for pack horses, baggage wagons, and other means of transport indispensable to footmen, in this instance saved, mounted gun men, as auxiliaries in such a campaign as the one contemplated, will be found to save both blood and treasure to the United States. The volunteers that have been invited to the field are of tried materials, and such as can be relied on in the day of danger and trial. With respect, &c.

[Signed] ANDREW JACKSON, *Maj. Gen. Commdg.*

Hon. J. C. CALHOUN, *Secretary of War.*

[No. 5.]

Head Quarters, Division of the South, Nashville, Jan. 11*th*, 1818.

SIR: I have just received orders from the President of the United States to repair to Fort Scott, Georgia, with instructions to call upon the governors of the neighboring states for such additional militia force as may be deemed necessary to co-operate with all the disposable regular troops of the Southern Division against the Seminoles. I have this night addressed circulars to several of those brave officers who served with me during the Creek campaign, under a hope that a timely address to the patriotism of our citizens will enable me to effect, by voluntary enlistment, what would otherwise have to be done by drafts. I have called for 1000 mounted men; and, should the appeal prove inefficacious, will embrace the earliest opportunity of making the requisition on you for a like number of drafted militia.

I have received your letter of the 4th instant, and am happy to hear of the ratification of the treaty with the Cherokee Indians.

With respect, your most obedient servant,

ANDREW JACKSON, *Maj. Gen. Com.*

Gov. M'MINN, *of Tennessee.*

True copy—J. C. BRONAUGH, U. S. Army.

[No. 6.]

Head-Quarters, Southern Division, Nashville, Jan. 11, 1818.

CIRCULAR.

SIR: The Seminole Indians have raised the war hatchet.—They have stained our land with the blood of our citizens. Their war spirit must be put down: and they taught to know

that their safety depends upon the friendship and protection of the United States. To accomplish this, the aid of one regiment of mounted gunmen, of one thousand men, completely armed and equipped, and to serve during the campaign, is asked from West Tennessee. Can you raise them, and be ready for the field in ten days? If you can, your General, who led you to victory on the plains of Talledega, Emuckfau, and Tohopeka, asks you to accompany him to the heart of the Seminole towns, and there aid in giving peace and safety to the southern frontier. An answer is expected in five days, and it is anticipated that the number required is now ready. This is a private appeal to the patriotism of West Tennessee, and is not to appear in a newspaper. If the regiment is raised and marched, all expenses for expresses shall be paid. By the return of the express you are expected to give your opinion of the probability of the result, that preparations may be made accordingly. Col. R. H. Dyer, Col. Gibson, Col. Williamson, Col. George Elliott, Major William Mitchell, Major John Smith, of Montgomery county, Col. Martin, of Williamson, and Captain F. Ellis, of Dixon county, have alone been addressed on this subject. The grade of the officers to be determined by themselves, or the platoon officers of the regiment. The officers raising companies to command them. Upon further reflection, it is requested that those officers named above, and all such as can raise a company, will meet me at this place on the 19th of the present month. Punctuality in this is much desired; and it is further requested that all those officers who have served in the late war will be confidentially notified of the foregoing.

I have the honor to be, A. JACKSON,
Major Gen. Com'g.

True copy—J. C. Bronaugh, U. S. Army.

[No. 7.]

Head Quarters, Division of the South,
Nashville, 13th Jan. 1818.

Sir: Being advised that the Assistant Deputy Quartermaster General of General Gaines's brigade has resigned, and being unadvised as to quartermasters' funds within the 7th Department, I have to request that necessary funds be forwarded to Quartermaster General Gibson, at Fort Scott, whom I have ordered to meet me at that place without loss of time.

Should the one thousand volunteer gunmen attend to my appeal to their patriotism, I shall send on a confidential agent to Georgia, to have the necessary supplies for them procured

and forwarded by the Quartermaster, if any there, to Fort Gaines, and if none, by the agent sent, with instructions to draw on Quartermaster General Gibson for the amount of his purchases; this is done to facilitate the march of the volunteers called for. I need not observe, that, without quartermasters' funds, an army cannot be wielded either with promptitude or effect—promptitude in the present campaign will be a great saving to the United States, both in character and purse.

I have the honor to be, most respectfully, your most obedient servant,

[Signed] ANDREW JACKSON, Maj. Gen. Com'g.

Hon. J. C. CALHOUN, *Secretary of War.*

[No. 8.]

NASHVILLE, *January* 19*th*, 1818.

SIR: In my last, I informed you of the late order received from the President of the United States, and of the appeal I had made to the patriotism of West Tennessee. This day the officers, who heretofore commanded the volunteers, met me, and report, that two regiments of mounted gunmen will rendezvous on the 31st instant, at Fayetteville, prepared and equipped for a tour of six months. Thus, you see, that my best hopes of Tennessee are realized. Had circumstances permitted, and time would have allowed, and the emergency demanded an appeal to the whole state, I have no doubt but five thousand men could have been raised. There appears no difficulty but the want of arms. With these two regiments and the regulars, should the time of the Georgia troops have expired, I will be able to act promptly, and, I hope, with effect. The last account from Fort Scott, on the 19th ult. left the regular force in an unpleasant situation. I set out on the 22d, in the morning.

I have the honor to be, yours, respectfully,

[Signed] ANDREW JACKSON.

His Excellency JOSEPH M'MINN.

Certified—R. I. EASTER, *Aid-de-Camp.*

[No. 9.]

Extract of a letter from Major Gen. Jackson to J. C. Calhoun, Secretary of War, dated Nashville, 20th January, 1818, *Head Quarters, Division South.*

SIR: In a communication to you of the 12th inst. I acknowledged the receipt of your order of the 26th ult. and advised you of the appeal I had made to the patriotism of the West Tennesseeans. On yesterday, the officers who had so gal-

lantly headed the Tennessee mounted volunteers, during the Creek campaigns, met me at this place, and give every assurance of their ability to assemble two regiments of mounted gunmen, by the 31st inst. at any designated point within the western part of this state. I have ordered them to rendezvous at Fayetteville, and as many as may appear on the 31st inst. or the 1st of February, to be mustered and received into the service for six months, (if not sooner discharged,) by my Inspector General. The Contractor has instructions to issue to these troops twenty days' rations, and every measure has been adopted to facilitate their march, via Fort Jackson, by the most direct practicable route to Fort Scott. These troops will be well supplied as far as Fort Jackson, and there the necessary provisions may be obtained and packed to answer their immediate wants, until they are intercepted by supplies from below. Major Fanning has been dispatched to Fort Hawkins, to purchase and forward on their supplies to the most convenient point of interception. I have advanced to him two thousand dollars, with authority to draw on the Quartermaster General for any additional sums wanted, and imposed upon him the temporary duties of Deputy Quartermaster General.

I am compelled to this arrangement from an impression that there can be no officer of the Quartermaster's Department in the vicinity of Fort Hawkins, and Colonel Gibson could not possibly reach that neighborhood to effect the objects wished. My Inspector General, Col. Hayne, (no Brigadier General having volunteered his services,) is charged with conducting the march of the two regiments of Tennessee volunteers to the southern frontier. From the contents of Col. Arbuckle's and Major Muhlenburg's letters, copies of which are herewith enclosed, you will readily perceive that the former must remain inactive, and that the latter is in a dangerous situation. Every information from our southern frontier justifies the decisive measures I have taken, and urges the prompt movement of the volunteers called into service. I trust you will view the subject in the same light, and that my arrangements may meet with your entire approbation. The troops now assembled on our southern boundary, reinforced with the Tennessee volunteers called into service, will enable me to inflict speedy and merited chastisement on the deluded Seminoles. I remain here to facilitate every arrangement for the prompt movement of the Tennessee detachment, but will leave this on the 22d instant, for Fort Scott, via Fort Hawkins. From Col. Arbuckle's letter I am advised of the

departure of Gen. Gaines from Fort Scott, and the newspapers communicate the information of the Georgia contingency being commanded by a Brigadier General. As he must consequently be the commanding officer of the forces in the neighborhood of Fort Scott, I have this day directed instructions to him, by no means to precipitate himself into a general engagement with the Seminoles, but at all hazards to relieve, if possible, Major Muhlenburg from his present situation, and cover his ascent up the Appalachicola river.

I have further advised him of my movements, and directed that he should remain on the defensive; collect all the necessary supplies, and have every preparation made for an active campaign, as soon as reinforced by the Tennesseeans.

General Gaines has been notified of this order. I have no later advices from him than that of the 2d of December, informing me of the catastrophe of Lieut. Scott and party.

[No. 10.]

Head Quarters, Division of the South, Nashville, 21st *Jan.* 1818.

Sir: You will repair to Fayetteville, Ten. on the 31st inst. and there muster and receive into the service of the United States, for six months, if not sooner discharged, two regiments of mounted volunteers. As soon as mustered, you will assume the command of these troops, and make every preparation to facilitate their march, via Fort Jackson, by the most direct and practicable route to Fort Scott, on the Flint river. You are authorised to organize and appoint such a brigade staff as you may deem necessary to the accomplishment of the duties assigned you. Every confidence is placed in your known activity and skill—and you are clothed with all discretionary power to facilitate the march of the volunteers to the designated post.

ANDREW JACKSON, Maj. Gen. Com'g
Div. of the South.

Col. A. P. Hayne, Inspector General.

True copy—J. C. Bronaugh, U. S. Army.

[No. 11.]

Head Quarters, Division of the South, Nashville, Ten. 21*st January,* 1818.

To facilitate the march of the volunteers placed under your command, you are authorised to draw, either upon the Secretary of War, or Col. George Gibson, Quarter-master General, at Fort Scott, for such funds as may be found necessary to meet any failure either in the Quarter-master or Contractor's department.

ANDREW JACKSON,
Maj. Gen. Com'g Div. of the South.

Col. A. P. Hayne, Insp. Gen. South. Div. U. S. Army.

[No. 12.]

Nashville, 28th January, 1818.

SIR: I have the honor to submit for your consideration the enclosed copies of instructions given me by Major General Jackson.

I have purchased as many pack horses and pack saddles as will answer for the use of the brigade. These purchases have been make in conformity to the General's order, and on the best terms the shortness of the time would admit.

As we take no wagons along with us, it is deemed absolutely necessary to allow each company two pack horses to transport their camp kettles and mess pans; for each man will have on his horse twenty days' provisions, as much corn as he may be able to carry, besides his ammunition and arms.

I assure you, sir, I shall strictly economize in all my expenditures.

I have the honor to be, &c.

[Signed] A. P. HAYNE, Insp. Gen.

Hon. JOHN C. CALHOUN, *Sec'y of War.*

True copy on file in my office.

[Signed] A. P. HAYNE, Insp. Gen.

Certified—R. I. EASTER, Aid de Camp.

[No. 13.]

Head-Quarters, Camp Blount, near Fayetteville, Feb. 9th, 1818.

SIR: The volunteer brigade from West Tennessee, which has been assembled at this place, have been furnished by private contract. The regular contractor not having been given the legal notice, refused to furnish the troops. Under these circumstances I have made the best arrangements in my power.

Each ration has cost the government twenty cents. The provisions furnished have been of a good quality. The organization of the brigade has been attended with much difficulty. We can be correctly taught by experience only the great difficulty inseparable from the organization of volunteer corps; and, on the present occasion, the shortness of the notice given the troops to assemble has added to those difficulties. The Major General commanding had authorised the field officers to raise two regiments, and they brought to camp forty captains, of which, I only could receive twenty into service. To merge the lesser fractions into the greater, and thus amalgamate them into single companies; to cut down captains, to leave out subalterns, and yet to satisfy and secure to us all the men, has been a very difficult task indeed. To effect these objects, I have been obliged, in a number of cases, to give an additional lieutenant and

cornet to the companies. The Major General agreed, in the first instance, that each company should have an additional Lieutenant Colonel, and Major. In fact, I have been compelled to give that organization that was formerly had in the Creek war. I would barely remark, that, on *strict military principles*, mounted gun men ought to have an additional number of officers. It is certainly more difficult to command 64 mounted gun men than 120 foot soldiers. I have served in both capacities, and have found it so. In foreign service, too, it is usual to give cavalry an additional number of officers. In order to reconcile jarring interests; to harmonize the conflicting elements of local partialities and narrow minded views, and not to lose sight of the great object of the campaign, there was left but one way to act. I do not hesitate to say, that one of our present command is intrinsically worth more to the government than two drafted militia; and you will find, in the end, that the course pursued by General Jackson will cost the government much less than any other mode which could have been adopted would have done. We take up the line of march to-morrow at sun-rise, with twenty days' provisions. I calculate to march from this ground with about twelve hundred men, and, before we cross the Tennessee river, I am in hopes they will amount to 1500. They are not as well armed as I could wish. The officers and men can be relied on. In a regular camp I never saw better discipline or more exact subordination exhibited; that is, so far as relates to correctness of conduct, and vigilance in attending to duty. The General left me with three thousand dollars, and I had only a few days to make those contracts absolutely necessary to move and feed our army.

I have acted for my country as I would, under like circumstances, have acted for myself.

At Tennessee river, where we must halt a night and day, I will forward to the Adjutant and Inspector General's office, a report of the strength of the brigade, also the muster-rolls. Captain Kingsley has furnished in the contractor's, and a merchant of Fayetteville, Mr. B. M. Garner, in the quarter-master general's department. They will accompany me as far as Tennessee river, at which place I shall liquidate their accounts by bills on government, drawn at ten days sight.

I am, &c. [Signed] A. P. HAYNE, Ins. Gen. com'g.

To the Hon. J. C. CALHOUN, *Sec'y of War, Wash'n City.*

True copy, on file in my office.

[Signed] A. P. HAYNE, Insp. Gen.

Certified—R. I. EASTER, Aid-de-camp. U. S. army.

[No. 14.]

Head Quarters, South Bank of Tennessee River, 13th Feb. 1818.

Sir: I have the honor to inform you that I shall take up the line of march to-morrow morning at day light. I shall march from this ground with 1100 effective men, and will be joined on the route by another full company. I am sorry to inform you that not more than two thirds of our men are well armed. I shall procure as many arms on the route as I may be able to obtain, and shall state to the individuals from whom they are procured, that they will be paid for by the United States, should they not be returned uninjured at the end of the campaign. It may be our fortune to meet the enemy before we form a junction with general Jackson; and, under those circumstances, on the subject of arms, I could not hesitate a moment. Our route is through the Cahawba Valley, by the way of Fort Jackson, and at the latter place I expect to hear from the general; and if he directs it I can, by a rapid move, reach Fort Scott in four days. The volunteers from West Tennessee will do their duty; all of them, officers and men, can be strictly relied on.

I have the honor to be, sir, very respectfully your obedient servant,

[Signed] A. P. HAYNE, Insp. gen. com.

To the Hon. John C. Calhoun, *Sec'ry of War.*

True copy, on file in my office.

A. P. HAYNE, Insp. gen. U. S. A.

Certified—R. I. Easter, Aid-de-camp.

[No. 15.]

Head-Quarters, Tennessee Volunteers,
South side Tennessee River, 13th Feb. 1818.

Sir: I have the honor to transmit you the muster-rolls of the volunteer mounted gun men of West Tennessee; also a consolidated morning report of the brigade. I have had much trouble in procuring these returns.

I have the honor to be, very respectfully, your ob't serv't.

[Signed] A. P. HAYNE, Insp. gen. com. brigade.

To Brig. Gen. D. Parker, *Adj. and Ins. Gen. Wash'ton City.*

True copy, on file in my office.

[Signed] A. P. HAYNE, Insp. Gen.

Certified—R. I. Easter, Aid-de-camp.

[No. 16.]

Department of War, *7th March.* 1818.

Sir: I have had the honor to receive your letter of the 9th, and that of the 15th inst. I have the pleasure of expressing

to you my entire approbation of all the measures you have adopted to insure a prompt movement of the patriotic volunteers confided to your command.

It is a subject of regret that there is no public arsenal in that section of country, from which arms and equipments could be drawn. The course which you have taken to remedy the evil I trust will be effectual. So far as it may be practicable, let the arms be preserved and returned, after the campaign closes, to the owners. Where this cannot be done, let the account, properly vouched, be paid by the quarter-master's department.

The bills drawn on account of supplies of every kind will be paid when presented to this department. Upwards of one hundred thousand dollars have been forwarded to the pay-masters of the 4th and 7th regiments, for the payment of the militia before they are discharged. General Jackson will adopt such measures as will be proper to secure this object. The desire of the President, that the disbursing officers of the regular forces should be charged with the expenditures of the campaign, is the only obstacle to appointing the gentlemen recommended by the officers of the Tennessee brigade. Every attention will be given to secure the object of their wishes. I am well aware of the difficulties to be overcome to organize efficiently, and satisfactorily to the officers and men, a volunteer corps for the field. In the present instance, the pride and spirit of veterans, aided by patriotism, and directed by superior intelligence, have handsomely surmounted every obstacle. The alacrity with which the brave Tennesseeans have again resumed their arms in defence of their country, is a sufficient earnest that their efforts will be successful, and that their efficiency, joined with the gallant exertions of other corps, will speedily terminate the conflict.

I have the honor to be, very respectfully, your ob't serv't.

[Signed] J. C. CALHOUN, Secretary of War.

To Col. A. P. HAYNE, *Insp. Gen. com. Tennessee Brig.*

True copy, taken from the original on file in my office.

[Signed] A. P. HAYNE, Insp. Gen. U. S. A.

Certified—R. I. EASTER, Aid-de-camp.

[No. 17.]

Extract of a letter from John C. Calhoun, Secretary of War, to Major-General Andrew Jackson, dated 29th January, 1818.

Your letters of the 12th and 13th inst. are received. The measures you have taken to bring an efficient force into the field are approbated, and a confident hope is entertained that a speedy and successful termination of the Indian war will follow your exertions.

[No. 18.]

[Extract.] DEPARTMENT OF WAR, *6th Feb.* 1818.

SIR: I have the honor to acknowledge the receipt of your letter of the 20th ultimo, and to acquaint you with the entire approbation of the President of all the measures which you have adopted to terminate the rupture with the Indians.

The honor of our army, as well as the interest of our country, requires that it should be as speedily terminated as practicable; and the confidence reposed in your skill and promptitude assures us that peace will be restored on such conditions as will make it honorable and permanent.

I have, &c.

Maj. Gen. A. JACKSON, *Fort Scott, Georgia.*

[No. 19.]

MAJOR MUHLENBURG TO COLONEL ARBUCKLE.

Near the Ochesee Town, on the Appalachicola River, Tuesday Evening, December 16, 1817.

SIR: On Monday morning the transports were attacked by the Indians, from both sides of the river, with a heavy fire of small arms. We returned their fire; the firing has continued ever since. We have lost two killed and thirteen wounded, most of them severely; whether we have injured them any I am unable to say. We are now compelled to remain here, as it is impossible for us to carry out a warp, as a man cannot show himself above the bulwark without being fired on. I can assure you that our present situation is not the most pleasant, not knowing how soon, or whether we are to receive succor from above.

The wounded are in but a bad situation, owing to the vessel being much crowded, and it is impossible to make them any ways comfortable on board. Not having any other means to communicate to you, I am compelled to dispatch the keel boat under the command of captain Clinch, with instructions to make the best of his way to Fort Scott.

I hope to hear from you soon, with instructions how I am to proceed in my present situation.

With respect, &c.

[Signed] P. MUHLENBURG, Brev. Maj.

P. S. We have but a few days' provisions on hand; the men have been on half allowance some time.

[No. 20.]

COLONEL ARBUCKLE TO GENERAL GAINES.

FORT SCOTT, *December* 21, 1817.

SIR: Since closing my letter, the keel boat arrived from the vessels below, with some wounded.

Major Muhlenburg states, it is impossible for the vessels to get up, the shore being lined on both sides of the river, with Indians and negroes, who keep up a constant fire on them. He has determined, if the boat does not return to him this evening, to drop down, and try to get to the bay. The boat will leave this, under the command of major Twiggs, at 12 o'clock to day, and will reach them by sun down, provided, it is not interrupted in its descent.

I shall endeavor to keep up an intercourse with them (by means of the keel boat) until we can get the ammunition from on board; and, in the last extremity, they will be compelled to drop down to the bay, in doing which, I am apprehensive they will suffer severely.

You have, herewith, a copy of brevet major Muhlenburgh's letter of the 19th inst. He appears dissatisfied that more has not been done for his relief; in this, nothing shall be omitted that the force here can effect.

Should I attempt to march against the enemy, with all the force here, with the intention of removing him from the river, I am confident I should not succeed, and, at best, would sustain a very considerable loss.

Men, and means of every description, are greatly wanting here, and, should any misfortune happen to the vessels, we have not half a supply of ammunition, and not a single stand of spare arms.

I have not heard a word from you since your departure.

I am, sir, &c. &c.

(Signed) M. ARBUCKLE, Lt. Col. Com'd.

Maj. Gen. E. P. GAINES.

[No. 21.]

NEW OCHESEE TOWN, *December* 19, 1817.

SIR: Yours, by captain Blackston, was received at 12 o'clock this morning, and was in hopes that you would have been able to afford some relief to the command, as our situation demanded that something should have been done immediately. That we are not able to progress, is evident, as we have the enemy on both sides of the river, and, therefore impracticable to carry out a warp. Had we not heard from you by the keel boat, this morning, it was decided that we should have at-

tempted to return to the bay this evening. I shall now despatch the keel boat under the command of lieut. Gray, and try to retain our present position, until the night of the 21st.

In case we should not hear from you, or be reinforced by land, we shall make the attempt to reach the bay. For further particulars, I refer you to lieut. Gray.

With respect, &c.

[Signed] P. MUHLENBURG, Major.

Lt. Col. ARBUCKLE.

[No. 22.]

Head Quarters, Division of the South,
Nashville, 20th January, 1818.

SIR: I have received your letter of the 18th ult. and have to regret the situation in which you are unfortunately placed. Every effort will be made, however, to relieve you. I shall leave this for Fort Hawkins on the 22d; and two regiments of mounted volunteers will rendezvous at Fayetteville, Tenn. on the 31st instant, and proceed, by forced march, direct to our southern frontier.

The commanding officer of the Georgia militia has instructions, this day, not to invite a general engagement with the Indians, but, at all hazard, to aid you in relieving Major Muhlenburgh.

[Signed] ANDREW JACKSON, Maj. Gen.
Com'g Div. of the South.

Col. ARBUCKLE, com'g at Fort Scott.

True copy—J. C. BRONAUGH, U. S. Army.

[No. 23.]

ELM GROVE, 21*st May*, 1819.

DEAR GENERAL: I have just returned home from the Western district, and have recently seen the report of the Senate of the United States, relative to the Seminole war, wherein I find you charged, by a committee of that honorable body, of organizing and appointing the officers to take the command of the volunteers from this state, engaged in that war. Certainly that committee could not have received the proper information respecting this particular subject; and, believing that you, sir, have a wish that the facts should be stated in all quarters wherein you are concerned, I have thought proper to make the following statement, which every field officer belonging to the two regiments, I have no doubt, will recollect to be facts:

In the month of January, 1818, you made an appeal to a

number of those officers who had accompanied you in the Creek war, and to Mobile, Pensacola, and New Orleans; and named to them that there were one thousand men wanting, and that volunteer mounted men would be received; and requested that those officers would meet at Nashville, on the 19th January, 1818; at which time and place a number of officers met. After assuring you that the men could be raised with ease, it was proposed by myself and some other officers there present, for you to name the officers to command those troops. This you refused, and said, agree amongst yourselves who are your officers; and then stated to the officers present that you would appoint col A. P. Hayne to lead us on to Fort Scott; and, on our arrival at that point, you would then take the command yourself. We then left you and withdrew to a room, where it was agreed that I should take the command of the 1st Regiment, and Col. Thomas Williamson should take command of the 2d Regiment; and that we would officer and organize them in the same way that the volunteer mounted gun men were organized in 1814, when we marched to Mobile, Pensacola, and New Orleans. The other field officers were then agreed on, and our names reported to you in writing, who would command the two regiments. You then named to the officers the law regulating the peace establishment, and how the regiments were officered under that law. It was then named to you by myself, together with several other officers, that, by experience, we had found that horse men required more officers than foot men, on account of horse men covering a much larger space. You then said, organize yourselves in a way that you may think proper; it will rest with the government. A number of those officers whom you made the appeal to, were commissioned by James Madison, Esq. then President of the United States in 1812; and a part of them, under all privations, stuck to the service with you without a murmur during the war with Great Britain and the hostile Creek Indians.

I am, sir,

With the greatest respect,

Your most ob't humble serv't,

[Signed] R. H. DYER, late Col. 1st Reg't Ten. M. G. M.

The facts stated in the above letter are known to the undersigned, who was present at the time alluded to, to be correct. THOMAS WILLIAMSON,

Late Col. 2d Reg't T. M. G. M.

Certified—R. I. EASTER, *Aid-de-camp.*

[No. 24.]

I, James Gadsden, a captain in the army of the United States, on oath, declare that, during the whole period in which the transactions below detailed took place, I was an Aid-de-camp to Major General Andrew Jackson, and that the following narrative contains a true statement of facts to my knowledge:

Early in January, 1818, General Jackson received orders from the War Department to repair to Fort Scott, assume the command of the army, and to bring the conflict with the Seminole Indians to a speedy termination. The Secretary of War stated the enemy's force to be 27 or 2800 strong, and gave authority to the General to call from the neighboring states such a force as would ensure the desired object. The regular brigade under General Gaines did not, according to the last reports, exceed 600 men. He had called upon Georgia for not more than 1200 militia, and it was uncertain, at that period, whether the friendly Creek warriors would accept of the invitation tendered. Some additional force was therefore deemed necessary; and the speediest mode of raising it was a subject of solicitude to General Jackson. Governor M'Minn, of Tennessee, was engaged about this period in carrying into effect a treaty with the Cherokee nation, and it was a matter of great uncertainty, whether a letter would find him at his usual place of residence, near Knoxville, or not. He was not at the capital of the state, and his friends in and about Nashville were generally under the impression that he was still in the Cherokee nation. General Jackson determined, therefore, to make an appeal to his old companions in arms, many of whom held commissions in the militia of the state. His circular to these men, and his letter to the Governor, notifying him of what he had done, have been published.

I was present at the meeting of the field officers of the volunteers at Nashville, and heard no remarks of General Jackson calculated to control or influence them in the selection of their officers. The only subject of anxiety with him, appeared to be, that the men should be raised by the 1st of February. He desired that the number should be completed; that the men should be satisfied with their officers; that they should rendezvous at Fayetteville; be mustered into service, and overtake their General on the frontiers of Georgia. Col. Hayne, Inspector General, was instructed to command the detachment on their march to Fort Scott. He received authority to appoint no other officers than those attached to his

personal staff; a privilege enjoyed alike by regular and militia commanders. The Nashville company elected their own officers, and the Kentucky company was raised without even the knowledge of General Jackson. Their own feelings led them into the field, upon the mere knowledge of the fact, that the frontier was exposed to Indian aggressions.

I accompanied General Jackson through a part of Tennessee previous to his departure south. In every village we passed through, much interest was taken in the approaching campaign, and the citizens were generally inquisitive as to the nature of the appeal to their patriotism. I was directed by General Jackson to explain its character; and, in every instance, expressed but one opinion, as derived from him; that 1000 men were wanted to put a speedy close to the Seminole war; that, in consequence of the confidence which the General had in his old comrades in arms, and the facility with which volunteers could be raised, he had made this appeal; that they must be satisfied with their commanders, and elect their own officers. On this subject I found many individuals exceedingly scrupulous. They were assured that no intention was entertained to impose commanders on them: that the men were wanted, and the General was well aware that, to be efficient, they must be contented with their officers.

General Jackson left Nashville with one company of Tennesseeans. A company of Kentuckians overtook him in the Cherokee nation; and the Tennessee brigade had orders to join him, as soon as organized, on the frontiers of Georgia. From Hartford, General Jackson moved with the Georgia brigade, and was reinforced on his march to Fort Scott by about 600 friendly Creeks.

From Fort Gadsden, where the operations of the campaign may have been said to have commenced, the movement was made with a force of regulars, Georgians, and Indians, not exceeding 2000 men. The strength of the enemy was not known at this time to be less than that stated by the Secretary of War—2700. A detachment of Tennesseeans, and General M'Intosh's warriors, overtook the army on the morning of the attack on the Mickasuky villages, and all the troops called into service were not finally concentrated until the day after the movement from St. Marks towards the towns on Sahwanne river. The actual force of the enemy was never ascertained until their final dispersion from the Sahwanne river. Rumor often magnified their strength beyond that stated by the Secretary of War.

The demand of the surrender of St. Marks was made in

amity. General Jackson received intimation that the Indians and Negroes, combined, wished to throw themselves into that work as a dernier retreat; and the Governor of Pensacola had stated that the work and garrison were both too weak to resist their meditated attacks. I was entrusted with the communication to the Spanish commandant of St. Marks, and directed to urge the propriety of an *amicable* permit for the fort to be occupied by an American garrison until the close of the war, on the ground that the Seminole Indians were enemies to both nations, and that every facility should be afforded the American arms in closing a war so injurious to both parties. In the course of the negociation, facts disclosed themselves, developing the real character of the Spanish commandant, and, in a measure, implicating him as a party in the war. These facts were reported to the General; and not until then was the order issued for entering the fort by violence.

On the return of the army to Fort St. Marks, from the towns on the Sahwanne river, General Jackson expressed to me his determination to return to Nashville, conceiving that the war was closed. On the next day, information was given, by the captain of a small schooner from Pensacola, that hostile Indians were lurking about that town; that they had generally sought refuge to the west of the Appalachicola river, and were committing depredations on the road leading from Georgia to the Alabama. On this information, General Jackson observed, that it would be necessary to leave strong garrisons in St. Marks, Forts Gadsden, and Scott, and send a party to scour the country west of the Appalachicola; but he still expressed his intention to return to Nashville. So well persuaded were the officers, generally, that all operations were over, that many of them sought leave of absence. An officer attached to General Jackson's staff, as volunteer aid-de-camp, left him at this place for New-Orleans. Previous to his departure, he was told by General Jackson that his services would no longer be necessary, as he was determined to return to Nashville.

Lieutenant Sands was not sent to Mobile to forward on a train of artillery to a given point. This officer had commanded for many years in Mobile, and, being attached to the place, expressed a wish to visit it, with a view of being reinstated in the command, if possible. His request was granted, and he received an order, at the same time, to have a few pieces of ordnance in a condition for field service. Colonel Gibson received instructions, subsequently, from Fort Gads-

den, to have the artillery, ammunition, provisions, &c. transported to Fort Montgomery.

On the return of the army to Fort Gadsden, General Jackson received a reply, from the Governor of Pensacola, to his letter relative to provisions ascending the Escambia river. At the same time, letters were received by individuals, and further information from the captain of the schooner, that Pensacola was under the control of the Indians; that more than 400 warriors were in its vicinity, preparing for the renewal of hostilities on the Alabama frontier. Major Hogan, who had recently arrived from Fort Montgomery, reported some murders lately committed by Indians, direct from Pensacola, and who had returned with their plunder and scalps to that place. On the receipt of this information, Gen. Jackson observed to me that he must himself command the troops destined to scour the country west of the Appalachicola. *He did not, at that time, intimate an intention of occupying Pensacola.* To give security to the frontiers of Alabama was his object, and that his operations must be governed by circumstances which might occur.

On the 3d or 4th day's march, an express was sent to Col. Gibson, at Fort Montgomery, to endeavor to join the army, with the artillery and provisions, at or near Durand's Bluff, the lower crossing place on the Escambia.

At this place, a letter was received, by express, from Governor Bibb, detailing the murders which had been committed by hostile chiefs from Pensacola; and, the next day after the army had crossed the Escambia, the protest of the Governor of Pensacola was received. The bearer was dispatched with a note, promising a reply to the protest that night. The same day I was sent into Pensacola with a reply. The Governor had left his capital. The next day, the communication, demanding the occupancy of Pensacola and its dependencies, until Spain could control, by an adequate military force, the Indians within Florida, was delivered to the Governor at the Barancas; and, on his refusal to accede to the terms of that communication, the army took up its line of march to that place. The result is known.

The plan of St. Augustine was sent to General Jackson, at my request, and is now in my possession. As an engineer attached to the Seminole army, it was my duty to be prepared for any events, by obtaining accurate knowledge of the country which might be the scene of operations. I did not request the plan of the proprietor from any intimation from General Jackson that he intended or wished to visit that fortress.

JAMES GADSDEN.

State of Louisiana, City and Parish of New-Orleans.

Be it known, that, on this thirtieth day of June, 1819, before me, John Lynd, Notary Public in and for said city and parish, duly commissioned, personally appeared James Gadsden, who, in my presence, signed his name to the foregoing instrument in writing, and having been duly sworn, deposed that the contents thereof are true and correct. In faith whereof, I grant these presents, under my signature and seal of office.

JOHN LYND, *Notary Public.*

[No. 25.]

Arthur P. Hayne, Inspector General Southern Division of the army of the United States, and late commandant of the Tennessee volunteers, being duly sworn, testifies: That, in the month of January, 1818, Major General Andrew Jackson, of the United States' army, addressed circular letters to colonels Dyer, Williamson, Elliott, Mitchell, Philips, and others, and stated to them that the south western frontier was in danger, and that he had determined to make an appeal to the patriotism of the people of West Tennessee; that it was his wish to raise two regiments for that object; and deponent further testifies, that, on the arrival of the said field officers at Nashville, they, the said field officers, settled among themselves their own rank; and the deponent further declares, that the said field officers were not, in any way or manner, either directly or indirectly, mediately or immediately, controlled, governed, or influenced, by the said Major General Andrew Jackson; and the deponent further testifies, that the field officers determined, at their first meeting at Nashville, that individuals who first succeeded in bringing to the rendezvous full companies, should rank as captains, and command their own men, and that the same principle should govern the election of subalterns; and the deponent further testifies, that he never received any authority from Maj. Gen. Andrew Jackson, nor was he concerned himself, in any way or manner whatever, directly or indirectly, mediately or immediately, in any of the appointments of the officers of the Tennessee brigade, with the exception of those of his immediate staff; a privilege allowed to all commanding officers, either in regular or militia service. The deponent further testifies, that the muster rolls of the Tennessee brigade were forwarded on to the Adjutant and Inspector General's office, at Washington city, on the 13th February, 1818, from Ditto's landing on the Tennessee river; that the said rolls reached Washington in safety, and in the ordinary course of the mail.

[Signed] A. P. HAYNE.

Sworn to and subscribed before the undersigned, Judge of the first judicial district of the state of Louisiana, this 12th June, 1819. JOSHUA LEWIS.

Certified: R. I. EASTER, Aid-de-camp.

[No. 26.]

ROBERT BUTLER, Adjutant General of the Southern Division of the army of the United States, being duly sworn, testifies:

That, in the summer or fall of 1817, Mr. John Donelson, of the neighborhood of Nashville, went to Pensacola, and purchased lots of land there, with the approbation of the Governor; that the deponent had heard that Mr. James Jackson, of Nashville, was concerned with him, and was the only person concerned; he also understood that Donelson's first view, in going to Pensacola, was for the benefit of his health, that Mr. Donelson is nephew of General Jackson's wife; that he does not know the amount of Donelson's purchase; that he does not know, nor does he believe, that General Jackson had, or expected to have, any interest in said purchase, nor did he hear it ever suggested. The deponent further saith, that, on the 11th January, 1818, General Jackson addressed a circular to the old volunteer officers, to raise volunteers for the Seminole campaign, in which the following clause is found: "The grade of the officers to be determined by themselves, or the platoon officers of the regiment. The officers raising companies to command." The deponent has heard that an election was held, and the rank of the field officers established in that way, and not appointed by General Jackson, as stated in the deponent's affidavit before the committee of the Senate as positive, when the deponent then stated it as matter of opinion only; also, that the Governor of Tennessee was at Nashville, which, it appears from reference to papers, was not the case. The deponent further states, that General Jackson received information at St. Marks, on his return from Suwany, that there were about 600 hostile Indians at Pensacola, who received ammunition and provisions from the Governor, in consequence of which the General ordered Lieut. Sands, of the artillery, to Mobile, to hold two pieces of the field artillery in readiness for his orders. On the arrival of the army at Fort Gadsden, the General received information of several murders having been committed on the federal road, and was shewn a letter, said to be private, from a gentleman at Pensacola to Mr. Doyle, as the deponent believes, stating that a large number of Indians were in Pensacola, and depredating

on the property of the citizens; this information determined the General to change his route for Tennessee, by Pensacola, and orders were given to Col. Gibson to proceed to Mobile, and afford Lt. Sands every facility in moving the artillery to Fort Montgomery, to await the General's order, which was given, on nearing the Escambia, by express, requiring the artillery to form a junction with the army after crossing that river, which was executed. The General remarked to the deponent, on march to Pensacola, that if he found the information true, on reaching that place, he would demand a surrender of it; and the deponent believes that the determination of the General to occupy Pensacola and Barancas was made on receiving the protest of the Governor, and learning that his provisions were stopped by him at the former place. That, at the time the army attacked Mickasuky, there were not more than five hundred Indian warriors embodied, nor does the deponent believe there were, at any time during the war, more than five or six hundred embodied at any one place; that, from the nature of the subject, the statement must be conjectural; that the enemy's warriors were, in general, well armed; that deponent was told there were about thirteen hundred souls at Suwany, of which 250 or 300 were fighting men; that our army had one man killed and four wounded, in actions with the Indians during the campaign, and two killed at the Barancas.

Deponent further says, that general Jackson received from a private source a plan of the fortress of St. Augustine; and, as the deponent believes, it was sent to the general at St. Marks or Fort Gadsden, after his return from Suwany. That general Jackson had under his command in Florida, from recollection, about 1800 regulars, volunteers, and militia, and about 1500 Indians, under M'Intosh; and that the Indians were received and mustered into the service of the United States, under the orders of brevet major general Gaines, and mustered out of service, under the orders of major general Jackson, by a regular officer.

This deponent deems it due to himself to state, that the deposition published with the report of the committee of the Senate, under his name, was not written by him; but was taken down by Mr. Burrill, of that committee, and a promise given to the deponent, that, when it was thrown into form, it would be submitted for correction and signature, which was not done, although the committee were twice informed by one of its members, at the request of this deponent, that *parts* thereof were *not correct;* hence the deponent was not able to give

the necessary correction which he would have done, from an examination of papers and necessary reflection.

ROBERT BUTLER.

[No. 27.]

Extracts of two letters from the Governor of Tennessee, to Major General Andrew Jackson, dated Murfreesborough, April 6th, 1819.

"Your favor of the 3d inst. is now before me; and with pleasure I make the following reply:

"Your letter, dated Nashville, 11th January, 1818, reached me at Knoxville, seat of government."

"Your letters of the 11th and 19th of January, 1818, both reached me by due course of mail; the former advising of your having received instructions from the President of the United States to call on the Governors of the neighboring states for such militia force as you might deem necessary, to co-operate with the regular troops of the Southern Division, against the Seminole Indians; but, that you had made an appeal to the officers who had served with you in the Creek campaign, by which you expected that the necessity of calling on the state of Tennessee for 1000 drafted men would be superceded; which expectation must have been realized, by the advice contained in your letter of the 19th, above referred to; in which you state, that the officers have given you assurances that they would furnish two regiments at the earliest notice. Your mode of raising those troops met my entire approbation, and I gave it my support, in aiding Captain Dunlap in raising a company of mounted volunteers at South West Point, which, I have since learned, joined your army at Fort Gadsden."

[No. 28.]

NASHVILLE, 21*st April*, 1819.

SIR: In a conversation with Mr. Forsyth, on the subject of the report of the committee of the Senate, I stated, that the committee had mis-stated several facts in relation to the occurrences of the Seminole war. "First, that the Governor of Tennessee was in Nashville when you received your instructions to call for a portion of the militia of the state, and that you neglected to make any requisition upon him for the number for which you were authorised to call—informing him that he was not then in Nashville, and that you had written him immediately on receiving your instructions. I further told him, that you were prepared to prove that you had not appointed the officers to their respective commands, as alleged by the committee." To all which, Mr. Forsyth replied, that

it was much to be regretted, that, in an investigation so important to the country and the character of an individual, evidence so closely connected with the matter in consideration had not been earlier before the committee.

I am, sir, respectfully, your ob't serv't.

RICHARD I. EASTER.

Major General ANDREW JACKSON.

[No. 29.]

I, RICHARD K. CALL, Captain of the U. States' army, and Aid-de-Camp to Major General Jackson, do swear, that, some time during the last session of Congress, I was summoned to appear before a committee of the Senate of the United States, to give evidence in relation to the occurrences of the Seminole campaign; that, after giving the statement which appeared as one of the documents accompanying the report of the committee, (which statement was taken in writing by one of its members,) I was told by Mr. Lacock, chairman of the committee, that my testimony could not then be copied, in order to receive my signature, but that, by the next morning at 10 o'clock, it should be prepared; at which time I should have an opportunity of comparing it with the original, and of correcting any mistake which might arise in its being transcribed. I accordingly repaired, on the day appointed, to the Senate chamber, and was informed by Mr. Lacock, chairman, that the committee would not meet that day, and that my testimony was not yet copied. I again mentioned to him, that from the number of mutilations and erasures which had been made in wording my evidence, if it was copied, I should expect the right of seeing it before it should be given to the public. He replied, that he did not know that the committee would make any use whatever of my deposition; but if they should ultimately determine to introduce it as a document on which a report would be framed, it should be previously copied, submitted to my inspection, and receive my signature; none of which promises were complied with. After my interview with Mr. Lacock, I remained in Washington five or six days, to the best of my recollection, during which time I heard nothing from Mr. Lacock or my deposition; neither did I learn that my statement had been applied to any purpose, until my return from Philadelphia to Baltimore; at which place I saw it attached to the report of the committee.

My deposition, however, though published without my having an opportunity of correcting errors which might arise in transcribing it, and in direct violation of Mr. Lacock's promise, is, according to my recollection, correct, with a trivial exception. It is, however, not without error; and this error

will be found in the omission of the expression, *I believe*. When interrogated by the committee, in relation to the purpose for which Lieut. Sands had been ordered to Mobile, my answer was, *I believe* he was ordered there for artillery, and not positive to the fact. I moreover observed to the committee, that I did not at that time belong to the personal staff of Gen. Jackson; my duties were remote from his person, and, therefore, I was little acquainted with the views and opinions of the commanding General.

[Signed] R. K. CALL.

Sworn to, this 30th day of July, 1819, before

W. TANNEHILL,

Justice of the Peace, Davidson county, T.

True copy—R. I. EASTER, Aid-de-Camp.

[No. 30.]

NASHVILLE, 29*th July*, 1819.

I, JAMES C. BRONAUGH, of the United States' army, and attached to the staff of Major General Andrew Jackson, do swear, that, during the last winter, whilst at the City of Washington, I was summoned to appear before the committee of the Senate, in pursuance of their resolution of the 18th December last, "That the message of the President and documents relative to the Seminole war be referred to a select committee, who shall have authority, if necessary, to send for persons and papers: That said committee enquire relative to the advance of the United States' troops into West Florida; whether the officers in command at Pensacola and St. Marks were amenable to, and under the control of, Spain; and particularly what circumstance existed to authorise or justify the commanding General in taking possession of those posts:" That, when I appeared before said committee, I was questioned upon the subjects contained in my deposition, which is published in the documents accompanying their report of the 24th of February, 1819; that the substance of my answers was taken down by Major John H. Eaton, a member of the committee, and that it was expressly declared to me, by Mr. John Forsyth, another member, "that, if my testimony was used by the committee, I should have timely information, for the purpose of affording me an opportunity of correcting it;" that this promise made me by Mr. Forsyth was violated, and that I never saw the deposition afterwards, until it was published in the documents accompanying the report.

[Signed] J. C. BRONAUGH, U. S. Army.

Sworn to and subscribed, before me, this 24th day of July, 1819.

[Signed] R. C. FOSTER, J. P

True copy—R. I. EASTER, Aid-de-Camp.

[No. 31.]

Extract of a letter from William H. Crawford, Secretary of War, to Major-General Andrew Jackson, dated 27th September, 1816.

"The destruction of the negro Fort, at the junction of the Appalachicola and Flint rivers, may have removed the necessity of keeping up so large a force in that quarter. It must, however, be admitted, that every means of exciting those Indians to hostility will be resorted to in the event of a Spanish war. But even in that event, it is questionable whether we should keep so large a portion of our active force pent up in a fort acting on the defensive, when, in fact, there is nothing worth defending. The militia of Georgia would be competent to the chastisement of the hostile Indians in that quarter. If the danger becomes more threatening, all the posts in the interior of the Indian country may be occupied by the militia of that state and Tennessee, so as to admit of the assemblage of the whole regular force at the point immediately menaced. Your knowledge of the situation of the posts within your command will enable you to adopt the necessary measures to secure the object presented in this communication.

In withdrawing forces from posts now occupied, you will keep in view the preservation of the military stores which may have been deposited in them, which can only be done by transporting them with the troops, or by leaving a sufficient number of them for their protection, until the post can be manned by the militia, or troops brought from the Northern Division."

True copy from the original—R. I Easter, Aid-de-camp.

[No. 32.]

War Department, 2*d October*, 1816.

Sir: Your communication of the ult. with its inclosures, have been received and submitted to the President, as well as my letter of the 27th ult. to you. Since the date of that letter, information has been received directly from Spain, which gives additional force to the impressions entertained in relation to colonel Jessup's communications. The improbability of the information given by that officer will not, in the opinion of the President, justify any arrangement which is calculated to produce public excitement.

A judicious disposition of the force under your command, with a view to meet an event of that nature, is all that is considered necessary at the present moment, except the transportation of arms and munitions of war, to the menaced point of attack, which such measure renders indispensable. These

dispositions you will carry into execution agreeably to the instructions contained in my letter of the 27th ult. with such modifications as the actual state of the posts, and a due regard to the public interest may require.

I have the honor to be your most obedient and very humble servant,

[Signed] WILLIAM H. CRAWFORD.

ANDREW JACKSON, *Maj. Gen. com'dg Southern Division.*

Certified—R. I. EASTER, Aid-de-camp.

[No. 33.]

DEPARTMENT OF WAR, *December 30th*, 1817.

SIR: Colonel Gideon Morgan, late of Tennessee, having offered to raise a small force, composed of Cherokee Indians, it is the wish of the President that you accept the force which he may raise and bring into the field, provided you think such a force may be usefully employed during the contest with the Seminole Indians.

Colonel Morgan is referred to you for orders and instructions.

I have the honor to be your most obedient servant,

[Signed] J. C. CALHOUN.

Maj. Gen. A. JACKSON, *Nashville, Ten.*

Certified—R. I. EASTER, Aid-de-camp.

[No. 34.]

I, Isaac M'Keever, a lieutenant in the navy of the United States, on oath declare, that the following narration contains a true statement of facts, to the best of my knowledge. I commanded the naval force which conveyed the store-ships, transports, &c. from New-Orleans to Fort Gadsden, and from thence to the Bay of St. Marks, during the Seminole war. I arrived in the said Bay on the 1st April, 1818, with British colors flying at my mast head; the next day I was visited by a Spanish lieutenant, the second in command at Fort St. Marks. The lieutenant was inquisitive as to the character of my vessels, and the nature of my visit, and wished to know whether I had any authority from the captain general of Cuba for entering the territories of his Catholic Majesty. In reply, I asked him if he had seen my colors on entering the Bay of St. Marks, and intimated to him that the nature of my visit could not be satisfactorily explained until the arrival of captain Woodbine; at the same time intimated that it was of an illicit character, and that succor, aid, &c. to Hillis Hajo and his warriors, in their present distress, was intended.

At the mention of this he expressed much satisfaction; stated that captain Woodbine and the Spanish commandant of St. Marks were good friends, and voluntarily gave me every information as to the movements of general Jackson's force, and his strength; the situation of the hostile Indians he detailed at length, and stated what rejoicings the reception of the long promised and expected succor would occasion. He stated that Hillis Hajo and the Spanish commandant were on intimate terms; that the former was then in the vicinity, and had lately been in the Fort of St. Marks, when he had urged, with menaces, the commandant to send on board to ascertain, to demonstration, the character of strangers; and having satisfied himself, he would see Hillis Hajo that evening; after which we might expect a visit from the latter, who accordingly came on board the following morning. He likewise informed, that Arbuthnot, a friend to the hostile Indians, and acquaintance of captain Woodbine, was in Fort St. Marks. On my expressing to him some apprehension of being blockaded by an American squadron, reported to be on the coast, or of my retreat being cut off by Jackson, he replied that the latter was impossible; that Jackson had but few pieces of artillery, and the impracticability of the swamps would prevent his assuming any position below me; but that I need apprehend no danger from any quarter; that, as allies, by anchoring under the guns of the fort, protection could be afforded me.

About this time we were informed by the Spanish officers and Indians, who came on board, that, on our arrival within the Bay, the Indian camp demonstrated much joy at the approach of their expected supplies of munitions, &c.

[Signed] I. M'KEEVER.

Sworn to this 5th June, 1819.

[Signed] DM. A. HALL, Judge U. S. Louis. dis.

True copy.—R. I. EASTER, Aid-de-camp.

[No. 35.]

NAVY DEPARTMENT, *27th March*, 1818.

SIR: In the present state of hostilities between the Indians and the United States, your aid and co-operation may be required by the general commanding the United States' army in the South. You will, therefore, afford all the aid and support in your power, and keep up a correspondence for this purpose.

Dispatch immediately two gun boats and two of the small vessels to Mobile and to the Appalachicola, to protect the convoys of supplies; *and to remove any obstruction* to a free

communication between the *forts* and *forces* of the United States. It will be your duty also to adopt such further measures as the circumstances of the case, or the developement of events, may render necessary.

[Signed] B. W. CROWNINSHIELD.

P. S. Commodore J. D. Henley is also ordered to send one of the small vessels of his squadron to the Appalachicola; which vessel will be subject to your order.

Commodore D. T. PATTERSON,

Commanding Naval Station New-Orleans.

True copy.—R. I. EASTER, Aid-de-camp.

[No. 36.]

ACT of the Legislature of Tennessee, 1815, chap. CXVIII. sect. 112.

Be it enacted, That, when it may be conceived that the public good eminently requires it, the governor is hereby authorized to call out such parts of the cavalry of this state as he may think proper; and, when so called out, they shall be considered ruled and regulated as mounted gun men for the time he may so order them.

[No. 37.]

Head Quarters, Nashville, 19th January, 1818.

SIR: I am instructed by the commanding general to direct that you march your volunteer regiment of mounted gun men to Fayetteville, to be there on the 31st inst. completely armed and equipped, and prepared to march for Fort Scott, in Georgia, for a six months' tour. Your troops will furnish themselves, until they reach Fayetteville, with their own provisions and forage; the former of which will be reimbursed them by the contractor, and the latter by the quarter-master.

I have the honor, &c. &c.

J. M. GLASSELL, Aid-de-camp.

To Cols. DYER *and* WILLIAMSON.

True copy—J. C. BRONAUGH, U. S. Army.

[No. 38.]

WASHINGTON, *March* 3, 1819.

On an examination before the special committee of the Senate, on the subject of the Seminole war, I was told by the Hon. Mr. Burrill, one of the committee, that what he (Mr. Burrill) then took down of my testimony was a memorandum; and, if used, that my deposition should be written out, and submitted to me for correction. The deposition was not submit-

ted, but was sent at once to the printer, who, believing that several words were omitted, sent it to me for revisal. I then waited on two of the committee, Mr. Lacock and Mr. Burrill, and obtained leave to strike out a part; but they would not permit me to make any additions. The parts struck out were not material. What I wished to add, was the substance of an order, the following extract from which I beg leave to make a part of this deposition:

Extract of an order to Col. Gibson, dated Camp, twenty-six miles east of St. Marks, 24th April, 1818.

"General M'Intosh and his warriors will be at Fort Scott, and will probably take much of the supplies ordered up; and, as the Tennessee volunteers will pass from Gadsden to that point, he wishes you to despatch a boat with a further supply; and should the corn have arrived from New-Orleans last ordered, you will forward a considerable quantity also to enable the volunteers' horses to reach Fort Hawkins.

ROBERT BUTLER, Adjt. Gen."

The order from which this extract is made, together with the order from which the following is extracted, were submitted through Mr. Eaton to the committee: I beg leave also to make the second extract a part of this deposition, to wit:

Extract of another letter to Col. Gibson, dated before St. Marks, April 9, 1818.

"This is carried by one of those deluded wretches who have asked for peace, and it is granted them: 17 men, 18 women, and 30 children have surrendered; and they ask permission to pass by water to Fort Gadsden: this is granted them, and they will remain here until the runner returns, by whom you will write to the commanding officer of St. Marks, Capt. Vashon, under what badge you will know them.

AND. JACKSON"

[Signed] GEO. GIBSON.

District of Columbia, Washington county, to wit:

On this 3d day of March, 1819, George Gibson personally appeared before the subscriber, a justice of the peace, in and for the county aforesaid, made oath, in due form of law, that the matters and things as set forth in the annexed statement are true as stated. *Sworn before*

JOSEPH FORREST.

[No. 39.]

DEPOSITION OF CHARLES BARON.

Charles Baron, a resident of Pensacola, being sworn, states: that about the latter end of April, or beginning of

May, 1818, a party of Indians, amounting to near 100, were in Pensacola with a quantity of plunder, which it was generally believed was taken at the time Stoke's family was murdered on the Escambia. The Indians sold this plunder openly to the inhabitants of Pensacola, and the deponent could not learn that the Spanish authorities at Pensacola made enquiries respecting it. The deponent further states, that, at several times in the present year, 1818, he saw parties of Indians furnished with provisions and ammunition from the king's store, but he does not recollect the dates of these transactions. The deponent further states, that he has frequently heard Spanish officers at Pensacola justify the conduct of the Indians towards the United States, manifesting in their conversation a decided hostility towards the Americans.

CARLOS BARON.

Sworn before me at Pensacola, Sept. 13, 1818.

H. YOUNG, Captain Top. Engineers.

[No. 40.]

DEPARTMENT OF WAR, *5th February*, 1819.

SIR: The enclosed is a copy of a letter from the chairman of the committee of the Senate, on the subject of the Seminole war.

Governor Bibb's letter to you of the 19th of May last is all the information now in the possession of this Department, relative to the enquiry of the committee.

I will thank you to communicate, as early as practicable, whatever information you possess on all the points of enquiry contained in the letter of the chairman, and not comprehended in the letter referred to.

I have, &c. &c.

[Signed] J. C. CALHOUN.

Maj. Gen. ANDREW JACKSON,

Com'd. Southern Division, Washington City.

Certified copy—R. K. CALL, Aid-de-camp.

WASHINGTON CITY, *February* 5, 1819.

SIR: I have the honor to acknowledge the receipt of your letter of the present date, enclosing a communication from the chairman of the committee of the Senate, requesting of you a copy of the letter addressed by major White Youngs to Governor Mazot, on the 27th April, 1818. Not having received a report from major Youngs, relative to the correspondence with governor Mazot, or his attack on the hostile Indians

in the vicinity of Pensacola, the only information I possess on the subject is contained in the letter of governor Bibb, dated on the 19th of May, 1818; to which I beg leave to refer you.

On my return from Suwance to St. Marks, I was informed (through the medium of Mr. Hambly) by the captain of a vessel direct from Pensacola, that a number of hostile Indians had assembled at that place. On interrogating the captain, he reluctantly stated, that, at the time of his sailing, there were in Pensacola 450 or 500 Indians; that they had been fed and furnished with munitions of war, and were committing depredations on the persons and property of the citizens on the frontier of Alabama, and also on the subjects of Spain. After receiving this information, I informed you in my letter, dated at St. Marks, on the 26th of April, that I should leave that place for Fort Gadsden in two or three days, and, after making all necessary arrangements for the security of the position occupied, and detaching a force to scour the country west of the Appalachicola, I should proceed direct to Nashville. I then ordered captain Sands to Mobile, to prepare and hold in readiness a train of artillery, should circumstances, arising out of facts disclosed, render its use in the field necessary. On this occasion, as on all others, I thought it my duty to be prepared fully to execute my orders, in putting an end to the conflict.

On my arrival at Fort Gadsden, [2d May, 1818] my quartermaster general, colonel George Gibson, (who was charged with the defence of that post,) handed me several letters, brought from Fort Montgomery by Maj. Hogan, from respectable citizens, confirming the report made by the captain of the schooner while at St. Marks; and detailing the murder of eighteen of our citizens on the Sepulgurs, and the destruction of a family near Fort Claiborne. Major Hogan also confirmed this information; and added, that the citizens of Montgomery were fortifying themselves. Similar information was received from two gentlemen, who arrived in a vessel laden with sutlers' stores for the troops at Fort Gadsden, but whose names are not now recollected; and by the captains of the sloop Hector and barge Peacock, direct from Mobile. In addition to the foregoing, I was shown a letter (confidentially written) from a person of high respectability in Pensacola, detailing the facts as stated by the captain of the schooner at St. Marks.

This information, corroborated by so many persons, determined me to go in person to Pensacola; and I ordered Col. Gibson forthwith to Mobile, with instructions to give every facility to captain Sands, in having the artillery secretly moved to Fort Montgomery, there to await my orders; and immediately organize a force sufficient for the execution of my orders, under date of 26th December, 1817.

After crossing the Choctawachy, I despatched an Indian guide with a soldier express to Fort Crawford, with orders to colonel Gibson and captain Sands, at Fort Montgomery, to move on the artillery and form a junction with me, after I crossed the Escambia river; which order was promptly executed. On my reaching the Escambia, I was met by captain Boyle's express from Governor Bibb, with the letter of the 19th of May, above mentioned; and, on reaching the west bank, received information that Holmes and his warriors were then in Pensacola, for which place I immediately marched. For my proceedings thereafter, I refer you to my detailed report.

Should you wish information on any other points growing out of my military operations during that campaign, it will afford me much pleasure to give it to you.

I am sir, respectfully, your obedient servant,

[Signed] ANDREW JACKSON,
Maj. Gen. Com'g S. D.

Hon. J. C. Calhoun.

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